

POLICY NOTE

THE PLANT HEALTH (SCOTLAND) (AMENDMENT) ORDER 2012

SSI 2012/266

Introduction

1. The above instrument is made by the Scottish Ministers in exercise of powers conferred by sections 2, 3 and 4(1) of the Plant Health Act 1967 as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972, and by section 2(2) of and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and all other powers enabling them to do so. The instrument is subject to negative resolution procedure.

Policy Objective

2. The purpose of this Order is to amend the Plant Health (Scotland) Order 2005 (“the 2005 Order”) to implement certain EU measures. This Order implements:-

- a. EU Commission Decision 2012/138/EU, which repeals Decision 2010/380/EC relating to measures to prevent the introduction and spread within Scotland of the plant pest *Anoplophora chinensis* (Forster) (citrus longhorn beetle);
- b. EU Commission Decision 2012/207/EU relating to emergency measures to prevent the introduction and the spread within Scotland of the potato pests *Epitrix cucumeris* (Harris), *E. similaris* (Gentner), *E. subcrinita* (Lec) and *E. tuberis* (Gentner);
- c. EU Commission Decision 2012/219/EU recognising Serbia as being free from *Clavibacter michiganensis* ssp. *Sepedonicus* (potato ring rot); and
- d. Decision 1/2010 of the Joint Committee on Agriculture set up by the agreement between the European Community (now the European Union) and the Swiss Confederation on trade in agricultural products (2011/83/EU).

2.1 It also amends the 2005 Order to 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, if the presence of that pest is determined.

2.2 The Order also substitutes a new definition of Directive 2000/29/EC (“the Plant Health Directive”) in order that references to the Plant Health Directive throughout the 2005 Order will take account of all amendments to date. The Order also inserts a new article 44A into the 2005 Order to create an information gateway between her Majesty’s Revenue and Customs (HMRC) and the Scottish Ministers, together with a new offence for breach of this article.

2.3 Lastly, the Order substitutes the text of article 40 of the 2005 Order to broaden the scope of licences which can be issued for scientific research on plant pests.

Policy Background and Legislation

3. The Plant Health Directive establishes the EU Plant Health Regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant products. The Plant Health Directive is implemented in Scotland, for non-forestry matters, by the 2005 Order. Similar but separate legislation operates in England, Wales and Northern Ireland.

4. The citrus longhorn beetle (“CLB”) is a damaging quarantine pest of a range of trees and shrubs. Its natural range includes China, Japan and countries in South East Asia. It poses a threat to horticulture, forestry and gardens in the UK. Despite warnings, China failed to comply with import requirements laid out by the European Commission so a 2-year ban on imports of Chinese *Acer* spp. (a host plant) was imposed. Whilst the ban was in force, the European Commission and the Chinese Authorities worked together to achieve satisfactory import requirements, to ensure that Europe is protected from the CLB. Commission Decision 2012/138/EU is the result of the working partnership – it contains a revised list of host plants for CLB and stringent conditions for the import of Chinese plants. The ban on import of Chinese *Acer* spp has now expired. The Scottish Ministers are satisfied that it is expedient for references to Commission Decision 2012/138/EU in the 2005 Order to be construed as references to that decision as amended from time to time, in order that certain technical changes which may be made to that decision could be incorporated into the 2005 Order without the need for further domestic legislation.

5. It is now recognised by the European Union that *Epitrix* spp is harmful to susceptible plants (namely tubers of *Solanum tuberosum* L, including those intended for planting) and that action is needed to mitigate the risk of it entering and establishing in Scotland. Commission Decision 2012/207/EU does this by introducing emergency legislation for restrictions on the import of ware potatoes and potatoes for planting (seed) from third countries where *Epitrix* is known to be present and on the movement of potatoes from demarcated areas (which are areas in which the pest has been detected) in Member States.

6. Item 12 of Annex IIIA to the Plant Health Directive prohibits the imports into the EU of potato tubers from third countries (except for Switzerland) but the prohibition is not to apply to European third countries which are recognised as free from *Clavibacter michiganensis* ssp. *sepedonicus* (Spieckerman and Kotthoff) Davis et al. Decision 2012/219/EU recognises that Serbia is free from this pest. Consequently, imports of potato tubers from that country should no longer be prohibited.

7. As Switzerland is not a member of the EU, imports of plants and plant products from Switzerland would normally be dealt with by the Plant Health Directive in the same way as for any other third country. However, in order to facilitate trade with one another, the EU and Switzerland have agreed to recognise each other’s plant health controls where there is a sufficient degree of equivalence in their effect. Decision 1/2010 (2011/83/EU) of the Joint Committee on Agriculture set up by the agreement between the European Community (now the European Union) and the Swiss Confederation on trade in agricultural products amends appendices 1, 2 and 4 of Annex 4 to the EU/Swiss agreement, in order to reflect the updated list of plants for which equivalence has now been achieved.

8. Section 18 of the Commissioners for the Revenue and Customs Act 2005 ('CRCA'), places Revenues and Customs officials under a general duty not to disclose information connected to their functions. A statutory information gateway is required in order for HMRC to disclose to the Scottish Government data on seizures made from passengers, commercial importers and postal traffic etc. or for any other bulk information which may be sought for plant health risk assessment purposes.

8.1. The criminal offence for wrongful onward disclosures is a necessary part of the gateway provision and provides that it is an offence for a person who has received information by that route from an HMRC official to disclose it to another person, if the data relates to an identifiable person, the disclosure is not for the purposes of the 2005 Order, or if HMRC have not consented to the disclosure. This is similar to the offence contained in section 19(1) of CRCA.

9. The Plant Health (Scotland) (Amendment) Order 2010 implemented Directive 2007/33/EC on the control of Potato Cyst Nematodes (PCN). The Directive requires that seed potatoes and other plants may not be planted unless they have been produced in soil which has been officially tested and found free of PCN. In addition to this, the Directive requires that Member States should carry out an annual official survey for the presence of PCN, on land in which ware potatoes have been grown. If PCN are found during this survey the same controls are to be applied to the land as for positive findings in soil tests for seed potatoes. This Order gives inspectors the power to perform a ware survey and to require the necessary actions if PCN is found.

10. The Plant Health Directive places restrictions on the import and movement of certain plant pests listed in the Annexes to the Directive. It also permits derogations from those restrictions for the purposes of scientific research. The Scottish Ministers issue licences in exercise of those permitted derogations by virtue of article 40 of the 2005 Order. However, the 2005 Order also places restrictions on the import and movement of pests which fall outside the EU regime but which may pose a threat to British plant life. There is a need for scientific research on these pests too. The Order broadens the scope of article 40 to allow the Scottish Ministers to issue licenses for the purpose of scientific research on these pests.

Consolidation

11. A commitment was made to consolidate the 2005 Order at the end of 2010 when the Plant Health (Scotland) Amendment Order 2010 was laid, but it has not been possible to take forward this consolidation. In the meantime the review of the EU Plant Health Regime started and it is expected that this will require substantial changes to the 2005 Order or a new PHO. **This means that a consolidation exercise would now no longer be the best use of resources.** New legislative proposals are anticipated from the Commission in early 2013 with possible implementation in 2015-16.

Timing

12. While the review of the EU regime is underway, existing EU and national plant health legislation will still require to be updated and amended to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments.

12.1. The amendments in this Order are necessary now to implement the new measures for CLB immediately to minimise the risk of infested plants entering the UK through Scotland, as the ban on Acers from China has expired and the import season from China starts around October and we need to ensure there is no gap.

12.2 It is also necessary to implement the Epitrix measures to ensure we meet our EU obligations and to minimise the risk of this pest entering the potato industry by locking down gaps in this trade as soon as we can. The other UK administrations are taking similar action.

12.3 It also made sense to take steps to correct the anomalies that came to light during 2010 until present.

Financial impact

13. A business and regulatory impact assessment has not been carried out for this Order as the requirements introduced by the Commission Decisions mentioned will not have a significant impact on Scottish businesses. There are normally no direct imports of relevant plants or ware potatoes to Scotland, but it is necessary to have controls in place to avoid displacement from points of entry elsewhere in Europe.

Scottish Government
Directorate for Agriculture, Food and Rural Communities