

2019 No. 421

PLANT HEALTH

The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) and paragraph 1A of schedule 2 of the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make 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 Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019 and to the European Union instruments mentioned in regulation 3(1) to be references to those instruments as amended from time to time.

(a) 1972 c.68 (“the 1972 Act”). Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”)). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), section 3(3) and schedule 1, Part 1. 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 1998 Act. Paragraph 1A of schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, schedule 1, Part 1. The 1972 Act is prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) from exit day (see section 20 of that Act).

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 and come into force on 14 December 2019.

(2) These Regulations extend to Scotland only.

Interpretation: general

2.—(1) In these Regulations—

“the 2005 Order” means the Plant Health (Scotland) Order 2005(a),

“commencement date” means the date on which these Regulations come into force,

“controlled consignment” means a consignment containing any plant, plant product or other object—

(a) which may not be brought into the Union territory without a phytosanitary certificate pursuant to—

(i) Article 72 or 74 of the EU Plant Health Regulation,

(ii) an EU emergency decision, or

(iii) any other EU plant health rule, other than Article 73 of the EU Plant Health Regulation,

(b) which was exported from the Union territory to a third country and is returning to the Union territory following the refusal by that third country to allow its entry into the country,

“controlled plant pest” means—

(a) a plant pest of a description specified in Annexes 2, 3 or 4 to Regulation (EU) 2019/2072,

(b) a plant pest of a description specified in an EU emergency decision, or

(c) a plant pest subject to any other EU plant health rule,

“EU emergency decision” means an instrument referred to in regulation 3(1),

“EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC(b),

“EU plant health rule” means a rule within the meaning given in Article 1(2)(g) of the Official Controls Regulation,

“the Forestry Order” means the Plant Health (Forestry) Order 2005(c),

“Official Controls Regulation” means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No

(a) S.S.I. 2005/613, as last amended by S.S.I. 2019/290. S.S.I. 2005/613 is revoked by these Regulations.

(b) OJ L 317, 23.11.2016, p.4, as last amended by Regulation (EU) 2017/625 (OJ L 95, 7.4.2017, p.1) with effect from 14 December 2019.

(c) S.I. 2005/2517, as last amended by S.S.I. 2019/278. S.S.I. 2005/2517 is revoked by these Regulations.

1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC, insofar as it applies to EU plant health rules(a),

“plant health inspector” means an official plant health officer appointed by the Scottish Ministers,

“plant pest” means a pest within the meaning given in Article 1(1) and (2) of the EU Plant Health Regulation,

“regulated item” means—

- (a) any plant, plant product or other object to which an EU plant health rule applies, other than any plant, plant product or other object which is part of a controlled consignment, or
- (b) a controlled plant pest,

“Regulation (EU) 2019/2072” means Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019(b),

“working day” means any day, other than—

- (a) a Saturday or a Sunday,
- (b) Easter Monday,
- (c) 26 December if it is not a Saturday or a Sunday,
- (d) 27 December in a year in which 25 or 26 December is a Sunday, or
- (e) a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(c),

“working hour” means a period of one hour during a working day.

(2) Unless the context otherwise requires, words and expressions which are not defined in these Regulations and which appear in both these Regulations and in the EU Plant Health Regulation or the Official Controls Regulation have the same meaning in these Regulations as in the EU Plant Health Regulation or, as the case may be, in the Official Controls Regulation.

Interpretation: EU instruments

3.—(1) In these Regulations—

“Commission Decision 98/109/EC” means Commission Decision 98/109/EC authorising Member States temporarily to take emergency measures against the dissemination of *Thrips palmi* Karny as regards Thailand(d),

“Commission Decision 2002/757/EC” means Commission Decision 2002/757/EC on provisional emergency phytosanitary measures to prevent the introduction into and the spread within the Community of *Phytophthora ramorum* Werres, De Cock & Man in ‘t Veld sp. nov.(e),

“Commission Decision 2004/200/EC” means Commission Decision 2004/200/EC on measures to prevent the introduction into and the spread within the Community of Pepino mosaic virus(f),

(a) OJ L 95, 7.4.2017, p.1, as last amended by Commission Delegated Regulation (EU) 2019/478 (OJ L 82, 25.3.2019, p.4) with effect from 14 December 2019.

(b) OJ L 319, 10.12.2019, p.1.

(c) 1971 c.80. Schedule 1, paragraph 2 sets out the Scottish bank holidays; it is amended by the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2), section 1.

(d) OJ L 27, 3.2.1998, p.47.

(e) OJ L 252, 20.9.2002, p.37, as last amended by Commission Implementing Decision (EU) 2016/1967 (OJ L 303, 10.11.2016, p.21).

(f) OJ L 64, 2.3.2004, p.43.

“Commission Decision 2011/787/EU” means Commission Decision 2011/787/EU authorising Member States temporarily to take emergency measures against the dissemination of *Ralstonia solanacearum* (Smith) Yabuuchi *et al.* as regards Egypt**(a)**,

“Commission Implementing Decision 2012/138/EU” means Commission Implementing Decision 2012/138/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis* (Forster)**(b)**,

“Commission Implementing Decision 2012/270/EU” means Commission Implementing Decision 2012/270/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix papa* sp.n., *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner)**(c)**,

“Commission Implementing Decision 2012/535/EU” means Commission Implementing Decision 2012/535/EU on emergency measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhner) Nickle *et al.* (the pine wood nematode)**(d)**,

“Commission Implementing Decision 2012/697/EU” means Commission Implementing Decision 2012/697/EU as regards measures to prevent the introduction into and the spread within the Union of the genus *Pomacea* (Perry)**(e)**,

“Commission Implementing Decision (EU) 2015/789” means Commission Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells *et al.*)**(f)**,

“Commission Implementing Decision (EU) 2015/893” means Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky)**(g)**,

“Commission Implementing Decision (EU) 2016/715” means Commission Implementing Decision (EU) 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa**(h)**,

“Commission Implementing Decision (EU) 2017/198” means Commission Implementing Decision (EU) 2017/198 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto**(i)**,

“Commission Implementing Decision (EU) 2018/638” means Commission Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith)**(j)**,

“Commission Implementing Decision (EU) 2018/1503” means Commission Implementing Decision (EU) 2018/1503 establishing measures to prevent the introduction into and the spread within the Union of *Aromia bungii* (Faldermann)**(k)**,

“Commission Implementing Decision (EU) 2019/1615” means Commission Implementing Decision (EU) 2019/1615 establishing emergency measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (ToBRFV)**(l)**,

(a) OJ L 319, 2.12.2011, p.112.

(b) OJ L 64, 3.3.2012, p.38, as amended by Commission Implementing Decision (EU) 2014/356/EU (OJ L 175, 14.6.2014, p.38).

(c) OJ L 132, 23.5.2012, p.18, as last amended by Commission Implementing Decision (EU) 2018/5 (OJ L 2, 5.1.2018, p.11).

(d) OJ L 266, 2.10.2012, p.42, as last amended by Commission Implementing Decision (EU) 2018/618 (OJ L 102, 23.4.2018, p. 17).

(e) OJ L 311, 10.11.2012, p.14.

(f) OJ L 125, 21.5.2015, p.36, as last amended by Commission Implementing Decision (EU) 2018/1511 (OJ L 255, 11.10.2018, p. 16).

(g) OJ L 146, 11.6.2015, p.16.

(h) OJ L 125, 13.5.2016, p.16, as last amended by Commission Implementing Decision (EU) 2019/449 (OJ L 77, 20.3.2019, p.76).

(i) OJ L 31, 4.2.2017, p.29.

(j) OJ L 105, 25.4.2018, p.31, as amended by Commission Implementing Decision (EU) 2019/1598 (OJ L 248, 27.9.2019, p.86).

(k) OJ L 254, 10.10.2018, p.9.

(l) OJ L 250, 30.9.2019, p.91.

“Commission Implementing Decision (EU) 2019/1739” means Commission Implementing Decision (EU) 2019/1739 establishing emergency measures to prevent the introduction into and the spread within the Union of Rose Rosette Virus^(a),

“Commission Implementing Decision (EU) 2019/2032” means Commission Implementing Decision (EU) 2019/2032 establishing measures to prevent the introduction into and the spread within the Union of *Fusarium circinatum* Nirenberg & O’Donnell (formerly *Gibberella circinata*) and repealing Decision 2007/433/EC^(b).

(2) References to Regulation (EU) 2019/2072 and the European Union instruments referred to in paragraph (1) are to be construed as references to those instruments as amended from time to time.

Article 82 of the EU Plant Health Regulation: meaning of “close proximity”

4.—(1) For the purposes of Article 82 of the EU Plant Health Regulation, the premises of a registered operator are to be regarded as being in “close proximity” to other premises of that operator if any point on the boundary of its operative area, or of any of its operative areas, is within ten miles of any point on the boundary of the operative area, or of any of the operative areas, of the other premises.

(2) In paragraph (1), “operative area”, in relation to the premises of a registered operator means—

- (a) in the case of premises which are used entirely by the registered operator to carry out one or more of the activities mentioned in Article 65(1) of the EU Plant Health Regulation, the area comprising those premises,
- (b) in the case of any other premises used by the registered operator to carry out one or more of the activities mentioned in Article 65(1) of the EU Plant Health Regulation applies, an area within the premises which is used by the registered operator to carry out any of those activities.

PART 2

Competent authorities

Designation of competent authority

5.—(1) The Scottish Ministers are designated as the competent authority responsible for the organisation and performance of official controls and other official activities in Scotland insofar as they relate to—

- (a) plant pests, plants, plant products or other objects, and
- (b) professional operators.

(2) For the purpose of carrying out those of their functions described in paragraph (3), Scottish Ministers may enter into arrangements with the Forestry Commissioners for those functions to be exercised by the Forestry Commissioners on behalf of the Scottish Ministers and in such manner as the Ministers may determine.

(3) The functions are functions under—

- (a) paragraph (1)(a) so far as exercisable in relation to tree pests, trees or forestry material,
- (b) paragraph (1)(b) so far as they relate to forestry professional operators.

(4) In this regulation—

“forestry material” means—

- (a) wood which retains part or all of its natural round surface, with or without bark,

(a) OJ L 265, 18.10.2019, p.12.

(b) OJ L 313, 4.12.2019, p.94.

- (b) wood in the form of chips, particles, shavings, sawdust, wood waste or scrap,
- (c) conifer trees over 3m in height,
- (d) bark which has been removed or become detached from a living, felled or fallen tree or from part of a living, felled or fallen tree,

“forestry professional operator” means a professional operator who carries out one or more of the following activities, but no other activities in relation to plants or plant products described in Article 2(9) of the EU Plant Health Regulation—

- (a) the introduction of forestry material into Scotland,
- (b) the storage, aggregation or movement of forestry material within Scotland, the movement of forestry material into Scotland from another part of the Union territory or the movement of forestry material from Scotland to another part of the Union territory,
- (c) the export of forestry material from Scotland to a third country,
- (d) the treatment and marking of wood packaging material or forestry material in accordance with Annex 1 to ISPM 15 or the repair of wood packaging material in Scotland,
- (e) the introduction of tree pests into Scotland, the movement of tree pests within Scotland or the holding or multiplication of tree pests in Scotland for official testing, scientific or educational purposes, trials, varietal selection or breeding,
- (f) the introduction of trees or forestry material into Scotland or the movement of trees or forestry material within Scotland for use in official testing, scientific or educational purposes, trials, varietal selection or breeding,

“ISPM 15” means International Standard for Phytosanitary Measures No 15 of March 2002 on Guidelines for regulating wood packaging material in international trade, prepared by the Secretariat of the International Plant Protection Convention established by the Food and Agriculture Organisation of the United Nations(a),

“non-forestry material” means plants, plant products or other objects, other than forestry material,

“tree” means a living tree or shrub, or a living part of a tree or shrub, at any stage of its growth,

“tree pest” means a plant pest which is injurious to trees or wood,

“wood packaging material” means wood or wood products (excluding paper products) used, or intended to be used, for supporting, protecting or carrying a commodity of any kind, including dunnage.

Disclosure of information

6.—(1) For the purposes of enabling any UK authority to fulfil the obligations placed on it by the EU Plant Health Regulation, the Official Controls Regulation and relevant legislation the Scottish Ministers may disclose information to another UK authority that the Scottish Ministers have received in the execution and performance of their functions.

(2) Nothing in paragraph (1) affects any other power or requirement of the Scottish Ministers to disclose information which exists under or by virtue of Union legislation or a statutory provision.

(3) In this regulation—

“functions” means functions under the EU Plant Health Regulation, the Official Controls Regulation and relevant legislation,

“relevant legislation” means these Regulations and any equivalent Regulations having effect in a UK territory other than Scotland,

(a) Available from the Secretariat of the International Plant Protection Convention, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/en/core-activities/standards-setting/ispm5/>

“UK authority” means—

- (a) in relation to England, the Secretary of State or the Forestry Commissioners,
- (b) in relation to Northern Ireland, the Department for Agriculture, Environment and Rural Affairs,
- (c) in relation to Scotland, the Scottish Ministers,
- (d) in relation to Wales, the Welsh Ministers,

“UK territory” means—

- (a) England,
- (b) Northern Ireland,
- (c) Scotland, or
- (d) Wales.

PART 3

Official Controls on controlled consignments from third countries and other official controls on goods from third countries

Derogation to the requirement to give prior notification in accordance with Article 1(1) of Commission Implementing Regulation (EU) 2019/1013

7.—(1) In the case of any controlled consignment which consists, in whole or in part, of unprocessed logs or sawn or chipped wood and is to be brought into Scotland at a point of entry which only has a temporary border control post, the operator who is responsible for the controlled consignment must notify the Scottish Ministers of the consignment’s arrival at least three working days before its expected arrival in Scotland.

(2) Article 1(1) of Commission Implementing Regulation (EU) 2019/1013 does not apply to any operator who is responsible for a controlled consignment referred to in paragraph (1).

(3) In this regulation—

“Commission Implementing Regulation (EU) 2019/1013” means Commission Implementing Regulation (EU) 2019/1013 on prior notification of consignments of certain categories of animals and goods entering the Union^(a),

“temporary border control post” means a border control post in Scotland which has been exempted from the obligations in Article 64(3)(a), (c) and (f) of the Official Controls Regulation pursuant to Article 4 of Commission Delegated Regulation (EU) 2019/1012 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for border control posts^(b).

Suspicion of non-compliance

8.—(1) This regulation applies where a plant health inspector suspects that a controlled consignment or a regulated item is likely to be, or has been, brought into Scotland from a third country in contravention of an EU plant health rule or that any such consignment or item may not otherwise comply with an EU plant health rule.

(2) A plant health inspector must serve a notice on the operator who is responsible for the controlled consignment or regulated item—

- (a) placing the consignment or item under official detention, and

(a) OJ L 165, 21.6.2019, p.8.

(b) OJ L 165, 21.6.2019, p.4.

(b) prohibiting the entry of the consignment or item into the Union territory, pending the outcome of official controls to confirm or eliminate the suspicion referred to in paragraph (1).

(3) This regulation applies to any controlled consignment or regulated item whether or not its ultimate destination is in Scotland.

Consignments not correctly presented for official controls

9. Where a plant health inspector suspects or is aware that a controlled consignment has not been presented for official controls in accordance with Article 47(1) of the Official Controls Regulation, or in accordance with the other requirements referred to in Article 66(6) of that Regulation, the plant health inspector must serve a notice on the operator who is responsible for the controlled consignment recalling the consignment and placing the consignment under official detention.

Official measures in relation to non-compliant consignments or consignments which pose a risk to plant health

10.—(1) This regulation applies to—

- (a) any controlled consignment or regulated item which, in the opinion of a plant health inspector, has been brought into Scotland from a third country in contravention of an EU plant health rule,
- (b) any controlled consignment or regulated item which has been brought into Scotland from a third country and which does not otherwise comply with an EU plant health rule, or
- (c) any consignment which has been brought into Scotland from a third country and which, in the opinion of a plant health inspector, poses a risk to plant health in Scotland or to any other part of the Union territory.

(2) A plant health inspector must serve a notice on the operator who is responsible for the controlled consignment or regulated item—

- (a) placing the consignment or item under official detention, and
- (b) setting out the measures which the operator must take in relation to the consignment or item.

Notices under regulation 8, 9 or 10

11. A notice under regulation 8, 9 or 10 may include any of the following—

- (a) the measures that the operator who is responsible for the controlled consignment or regulated item must take in relation to the consignment or item to isolate or quarantine the consignment or item or otherwise deal with the risk to plant health arising from the consignment or item,
- (b) where a plant health inspector requires the consignment or item to be destroyed or otherwise disposed of, re-exported or treated, the measures that the operator who is responsible for the controlled consignment or regulated item must take to destroy or otherwise dispose of, re-export or treat the consignment or item,
- (c) any other measures which the plant health inspector considers are appropriate in light of the suspected or known contravention or the risk to plant health in Scotland or to any other part of the Union territory arising from the consignment or item.

Border control posts: authorisation of inspection centre and commercial storage facilities

12.—(1) The Scottish Ministers may grant a permit which authorises—

- (a) the use of a facility which is located within a border control post as an inspection centre for the purposes of carrying out official controls and other official activities on controlled consignments and other regulated items on their arrival at the border control post,
- (b) the use of commercial storage facilities within the close vicinity of a border control post as a place at which identity checks and physical checks may be performed on controlled consignments and other regulated items on their arrival at the border control post.

(2) An application for a permit must be made to the Scottish Ministers by the operator of the facility or commercial storage facilities in the manner and form required by the Scottish Ministers.

(3) A permit may only be granted under paragraph (1)(a) if the Scottish Ministers are satisfied that the facility complies with the requirements specified in respect of inspection centres in Article 8 of Regulation (EU) 2019/1014.

(4) A permit may only be granted under paragraph (1)(b) if the Scottish Ministers are satisfied that the commercial storage facilities comply with the requirements specified in respect of commercial storage facilities in Article 3(11) of Regulation (EU) 2019/1014.

(5) A permit granted under paragraph (1)(a) or (b) must be in writing and may be granted—

- (a) subject to conditions,
- (b) for an indefinite period or a specified period.

(6) A permit granted under paragraph (1)(a) or (b) may be modified, suspended or revoked at any time by the Scottish Ministers by notice in writing.

(7) In this regulation, “Regulation (EU) 2019/1014” means Commission Implementing Regulation (EU) 2019/1014 to lay down detailed rules on minimum requirements for border control posts, including inspection centres, and for the format, categories and abbreviations to use for listing border control posts and control points(a).

Transitional provision: approved places of inspection

13.—(1) The Scottish Ministers may during the relevant period authorise—

- (a) the transportation of a controlled consignment to an approved place of inspection, and
- (b) the performance of identity checks and plant health checks by a plant health inspector at an approved place of inspection.

(2) The operator who is responsible for a controlled consignment that is destined for an approved place of inspection must—

- (a) by notice in writing give the Scottish Ministers the particulars set out in paragraph (3) no later than three working days before the consignment arrives in Scotland,
- (b) ensure that the consignment, its packaging and the vehicle in which it is transported are closed or sealed in such a way that there is no risk of the plants, plant products or objects in the consignment causing infestation, infection or contamination or a change occurring in the contents of the consignment, and
- (c) ensure that the consignment is accompanied by a plant health movement document.

(3) The particulars are—

- (a) the name, address and location of the approved place of inspection to which the consignment is destined,
- (b) the scheduled date and time of arrival of the consignment at the place referred to in subparagraph (a),

(a) OJ L 165, 21.6.2019, p.10.

- (c) if available, the individual serial number of the plant health movement document in relation to that consignment,
- (d) if available, the date and place at which that plant health movement document was drawn up,
- (e) the name, address and registration number of the operator, and
- (f) the reference number of the phytosanitary certificate or phytosanitary certificate for re-export required in relation to the consignment pursuant to Article 72(1) or 74(1) of the EU Plant Health Regulation.

(4) The operator must notify the Scottish Ministers immediately in writing of any changes to the particulars which the operator has given under paragraph (2)(a).

(5) The notice must be given to the Scottish Ministers at the address given by the Scottish Ministers from time to time for the purposes of this regulation.

(6) The Scottish Ministers may for the purposes of paragraph (1) approve a place to which a controlled consignment may be destined as a place at which identity checks and plant health checks may be performed by a plant health inspector during the relevant period.

(7) An application for approval under paragraph (6) must be made to the Scottish Ministers in the manner and form required by the Scottish Ministers.

(8) An approval may be granted subject to conditions, including conditions relating to the storage of controlled consignments, and may be withdrawn at any time if the Scottish Ministers no longer consider that the place to which the approval relates is suitable for the purpose for which the approval was given.

(9) The Scottish Ministers may only approve a place as an approved place of inspection if the place has been approved by the Commissioners for Her Majesty's Revenue and Customs for use as a temporary storage facility.

(10) In this regulation—

“approved place of inspection” means a place which was approved as a place of inspection by the Scottish Ministers under article 17(1) of the Forestry Order or the 2005 Order before the commencement date and which remains approved by virtue of regulation 53(1) or a place approved under paragraph (6),

“plant health movement document” means a document in the form set out in the Annex to Commission Directive 2004/103/EC on identity and plant health checks of plants, plant products or other objects, listed in Part B of Annex V to Council Directive 2000/29/EC, which may be carried out at a place other than the point of entry into the Community or at a place close by and specifying the conditions related to these checks^(a),

“relevant period” means the period beginning on the commencement date and ending on 13th December 2020,

“temporary storage facility” means a temporary storage facility within the meaning of Article 148 of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code^(b).

(a) OJ L 313, 12.10.2004, p.16.

(b) OJ L 269, 10.10.2013, p.1, as last amended by Regulation (EU) 2019/632 of the European Parliament and of the Council (OJ L 111, 25.4.2019, p.54).

PART 4

Official activities to prevent the establishment or spread of plant pests

Introduction

14.—(1) This Part applies if a plant health inspector suspects that a controlled plant pest or prohibited material is present or likely to be present, or becomes aware that a controlled plant pest or prohibited material is present, on any premises in Scotland.

(2) In this Part—

“premises” includes any place, including land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure,

“prohibited material” means—

- (a) a plant, plant product or other object which is carrying or is infested by or infected with a controlled plant pest or which may be carrying or may be infested by or infected with a controlled plant pest,
- (b) a plant, plant product or other object the entry of which into the Union territory or Scotland is prohibited under an EU plant health rule,
- (c) a plant, plant product or other object the movement of which within the Union territory, or into, within or from Scotland is prohibited under an EU plant health rule.

Notices in relation to controlled plant pests or prohibited material

15.—(1) A plant health inspector may serve a notice on the appropriate person—

- (a) requiring the appropriate person to treat, destroy or otherwise dispose of the controlled plant pest or prohibited material,
- (b) prohibiting for the period specified in the notice—
 - (i) the removal of any controlled plant pest or prohibited material from the premises, or
 - (ii) any activity which the inspector considers necessary to prohibit in order to prevent the establishment or spread of a controlled plant pest,
- (c) requiring the removal of any controlled plant pest or prohibited material from the premises, or
- (d) requiring the taking of any other steps, as specified in the notice, which the inspector considers necessary to eradicate the controlled plant pest or prevent its establishment or spread.

(2) If a plant health inspector has reasonable grounds for believing that it is necessary for the purpose of preventing the spread of, or ensuring the eradication of, any controlled plant pest from any premises, the inspector may serve a notice on the occupier imposing any prohibition or requiring any reasonable step to be taken for that purpose.

(3) In paragraph (1), “appropriate person” means—

- (a) in the case of premises used by a professional operator, the professional operator,
- (b) in the case of any other premises—
 - (i) the occupier or any other person in charge of the premises,
 - (ii) any other person who is charge of the controlled plant pest or the prohibited material at those premises.

Action which may be taken by a plant health inspector

16.—(1) A plant health inspector may, on giving reasonable notice, enter any premises and any adjacent premises for the purpose of taking steps to—

- (a) eradicate, destroy or otherwise deal with any controlled plant pest,

- (b) prevent the spread of any controlled plant pest,
 - (c) destroy, treat or otherwise deal with any infected material.
- (2) A plant health inspector must, if requested to do so, produce evidence of the inspector's authority before entering any premises for the purposes specified in paragraph (1).
- (3) Paragraph (1) does not apply to any premises which are used wholly or mainly as a private dwelling unless 24 hours' notice has been given to the occupier.
- (4) A plant health inspector may be accompanied by such other persons (including representatives of the European Commission) and may bring onto the premises such equipment and vehicles as the inspector considers necessary.
- (5) A person accompanying a plant health inspector under paragraph (4) may—
- (a) remain on the premises and from time to time re-enter the premises without a plant health inspector,
 - (b) bring onto the premises any equipment or vehicles that the person considers necessary,
 - (c) carry out work on the premises in a manner directed by a plant health inspector.
- (6) In paragraph (1)(c), "infected material" means—
- (a) a plant, plant product or other object which is carrying, or is infested by or infected with, a controlled plant pest or may be carrying or infected with a controlled plant pest,
 - (b) a plant, plant product or other object which is not carrying or is not infested by or infected with, a controlled plant pest but the presence or existence of which may, in the opinion of a plant health inspector, cause a controlled plant pest to spread or be spread.

Establishment of demarcated areas and measures to be taken in those areas

17.—(1) This regulation applies where the Scottish Ministers have officially confirmed the presence of a controlled plant pest which is not known to be present in Scotland or the presence of a controlled plant pest in an area of Scotland where it was not previously present.

- (2) The Scottish Ministers may by notice—
- (a) demarcate an area in relation to the presence of the controlled plant pest for the purpose of eradicating or containing the plant pest,
 - (b) specify the prohibitions or restrictions which are to apply to the demarcated area for that purpose.
- (3) A notice under paragraph (2)—
- (a) must be in writing,
 - (b) must describe the extent of the demarcated area,
 - (c) must specify the date on which any such prohibitions or restrictions are to commence,
 - (d) must be published in a manner appropriate to bring it to the attention of the public,
 - (e) may be amended or revoked, in whole or in part, by further notice.

PART 5

Temporary national measures

Temporary national measures

18. Schedule 1 has effect and makes provision for additional temporary measures to prevent the introduction of certain controlled plant pests into Scotland, or their establishment in, or spread within, Scotland.

PART 6

Registration, authorisations and certificates

Applications for registration

19. An application for registration pursuant to Article 66(1) of the EU Plant Health Regulation which is to be submitted to the Scottish Ministers must be submitted in the manner and form required by the Scottish Ministers.

Other applications

20.—(1) The following applications must be made to the Scottish Ministers in the manner and form required by the Scottish Ministers—

- (a) an application for a temporary authorisation to permit a relevant activity for official testing, scientific or educational purposes, trials, varietal selection or breeding,
- (b) an application for an authorisation referred to in Article 64(2) of the EU Plant Health Regulation,
- (c) an application for an authorisation referred to in Article 89(1) of the EU Plant Health Regulation,
- (d) an application for an authorisation referred to in Article 98(1) of the EU Plant Health Regulation,
- (e) an application for the issue of a phytosanitary certificate for export, a phytosanitary certificate for re-export or a pre-export certificate.

(2) In this regulation—

“relevant activity” means an activity which would otherwise be prohibited under the EU Plant Health Regulation or any other EU plant health rule involving—

- (a) the introduction of a plant pest or a plant, plant product or other object into Scotland,
- (b) the movement of a plant pest or a plant, plant product or other object within Scotland,
- (c) the holding of a controlled plant pest or a plant, plant product or other object at premises in Scotland,
- (d) the multiplication of a plant pest at premises in Scotland.

Authorisations for other purposes

21.—(1) This regulation applies to any derogation from provisions of the EU Plant Health Regulation which is set out in the EU Plant Health Regulation, in an implementing or delegated act adopted by the European Commission under the EU Plant Health Regulation or the Official Controls Regulation or in any decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union which continues to apply for the purposes of the EU Plant Health Regulation on or after the commencement date which allows member States to authorise an activity which would otherwise be prohibited by or under the EU Plant Health Regulation.

(2) The Scottish Ministers may grant an authorisation to permit the carrying out of the activity in the manner specified in the relevant derogation.

(3) An application for any such authorisation must be made to the Scottish Ministers in the manner and form required by the Scottish Ministers.

Authorisations granted by the Scottish Ministers

22. An authorisation granted by the Scottish Ministers for the purposes of the EU Plant Health Regulation or these Regulations must be in writing and may be granted—

- (a) subject to conditions,

(b) for an indefinite period or a specified period.

(2) An authorisation granted by the Scottish Ministers may be modified, suspended or revoked at any time by the Scottish Ministers by notice in writing.

PART 7

Measures relating to certain solanaceous species

Specific measures relating to certain solanaceous species

23. Schedule 2 has effect and makes provision for specific measures relating to certain solanaceous species.

PART 8

Notification requirements

Notification requirements in relation to seed potatoes

24.—(1) A professional operator who is bringing any of the following potatoes into Scotland must, at least two days before the expected date of their arrival in Scotland, provide written notification to a plant health inspector of the matters referred to in paragraph (2)—

- (a) seed potatoes grown outside Scotland, or
- (b) potatoes, other than seed potatoes, grown or suspected to have been grown in Poland, Portugal, Romania or Spain.

(2) The matters are—

- (a) the proposed time, date and means of landing,
- (b) the proposed place of landing,
- (c) their proposed destination and use,
- (d) their variety and quantity, and
- (e) the identification number of the producer of the potatoes or the reference number of the lot.

(3) In paragraph (1)(b), “Spain” has the meaning given in paragraph 3 of schedule 1.

Notification requirements in relation to citrus fruits

25.—(1) A professional operator who is introducing notifiable citrus fruits into the Union territory through a border control post in another part of the Union territory must, before their arrival at that border control post, provide written notification to the Scottish Ministers at the specified address of the matters referred to in paragraph (2).

(2) The matters are—

- (a) the expected date of their introduction into the European Union,
- (b) the name of the border control post,
- (c) their volume,
- (d) the identification numbers of their containers,
- (e) the names, addresses and the locations of the premises in Scotland at which they are to be processed.

(3) In paragraph (1)—

“notifiable citrus fruits” means fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., *Microcitrus* Swingle, *Naringi* Adans., or *Swinglea* Merr., originating in a third country, which are to be industrially processed into juice in Scotland,

“specified address” means the address given by the Scottish Ministers from time to time for the purposes of this regulation.

Notification requirements in relation to other plants and plant products

26.—(1) A professional operator who is bringing any of the following plants or plant products into Scotland must, before or no later than five days after the date of their arrival in Scotland, provide written notification to a plant health inspector of the matters referred to in paragraph (2)—

- (a) plants of *Castanea* Mill., *Fraxinus* L., *Olea europaea* L., *Pinus* L., *Platanus* L., *Prunus* L., *Quercus* L. or *Ulmus* L. intended for planting, which have been grown or are suspected of having been grown in another member State,
- (b) plants of *Castanea* Mill., *Fraxinus* L., *Olea europaea* L., *Pinus* L., *Platanus* L., *Prunus* L., *Quercus* L. or *Ulmus* L. intended for planting, which have been grown or are suspected of having been grown in Switzerland and to which Article 47(1) of the Official Controls Regulation does not apply,
- (c) solid fuel wood from another member State.

(2) The matters are—

- (a) the expected date of the arrival of the consignment or, if the consignment has arrived in Scotland, the date on which it first arrived in Scotland,
- (b) the intended destination of the consignment, or if the consignment has arrived at its intended destination in Scotland, its current location,
- (c) the genus, species and quantity of the plants or wood in the consignment,
- (d) the country from which the plants or wood have been consigned,
- (e) in the case of plants intended for planting, the identification number of the supplier of the plants,
- (f) in the case of solid fuel wood—
 - (i) the address of the consignor,
 - (ii) details of any phytosanitary treatments applied to the wood.

(3) In this regulation “solid fuel wood” means fuel wood in the form of logs, billets, twigs, faggots or other similar forms.

Notification requirements in relation to Tomato brown rugose fruit virus and Rose Rosette virus

27.—(1) This regulation applies to the following plant pests—

- (a) Tomato brown rugose fruit virus,
- (b) Rose Rosette virus.

(2) Article 9(3) of the EU Plant Health Regulation applies to the plant pests referred to in paragraph (1), but as if the references to Union quarantine pest were references to each of those plant pests.

PART 9

General powers of inspectors and enforcement

Interpretation

28. In this Part, “premises” includes any place, including land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure.

Powers of entry

29.—(1) A plant health inspector may enter any premises at a reasonable time for the purpose of—

- (a) performing official controls to verify—
 - (i) that an operator is complying with the Official Controls Regulation, the EU Plant Health Regulation and these Regulations,
 - (ii) that any plants, plant products or other objects which are subject to an EU plant health rule or to the requirements in schedule 1 comply with the rule or those requirements,
- (b) carrying out other official activities which are to be performed by the Scottish Ministers pursuant to the Official Controls Regulation, the EU Plant Health Regulation or these Regulations,
- (c) enforcing the Official Controls Regulation, the EU Plant Health Regulation or these Regulations,
- (d) verifying information supplied by a person in connection with an application for registration or for an authorisation or permit granted, or to be granted, under these Regulations,
- (e) ascertaining whether a condition of an authorisation or permit granted by the Scottish Ministers for the purpose of the EU Plant Health Regulation or the Official Controls Regulation is being or has been complied with.

(2) A plant health inspector must, if requested to do so, produce evidence of the inspector’s authority before entering any premises for the purposes specified in paragraph (1).

(3) Paragraph (1) does not apply to any premises which are used wholly or mainly as a private dwelling unless 24 hours’ notice has been given to the occupier.

(4) A plant health inspector who enters premises for a purpose specified in paragraph (1) or under a warrant issued by a sheriff, a summary sheriff or a justice of the peace may—

- (a) examine, photograph or mark any part of the premises, any object on the premises or anything that is attached to or otherwise forms part of the premises,
- (b) in the case of premises being used to manufacture wood packaging material, examine or test any treatment facility, machinery, tools or other equipment used for the manufacture of wood packaging material or observe and monitor the manufacture of wood packaging material,
- (c) take samples of or from any plant pest or any plant, plant product or other object or any container, package or item which has been or may have been in contact with a plant pest or plant, plant product or other object,
- (d) open any container or package or require the owner or person in charge of any container or package to open the container or package,
- (e) inspect or make copies of any documents or records (in whatever form they may be held) relating to the production of, or any activities relating to, any plant, plant product or other object.

(5) A plant health inspector may destroy or otherwise dispose of any sample taken under this regulation when the sample is no longer required.

(6) A plant health inspector may be accompanied by such other persons (including representatives of the European Commission) and may bring onto the premises such equipment and vehicles as the inspector considers necessary.

(7) A person accompanying a plant health inspector under paragraph (6) may—

- (a) remain on the premises and from time to time re-enter the premises without a plant health inspector,
- (b) bring onto the premises any equipment or vehicles that the person considers necessary,
- (c) carry out work on the premises in a manner directed by a plant health inspector.

Right of entry conferred by a warrant issued by a sheriff, a summary sheriff or a justice of the peace

30.—(1) A sheriff, a summary sheriff or a justice of the peace may by signed warrant permit a plant health inspector to enter premises under regulation 16 or 29 if necessary by reasonable force, if the sheriff, the summary sheriff or the justice of the peace, on sworn information in writing, is satisfied that—

- (a) there are reasonable grounds to enter those premises, and
- (b) any of the conditions in paragraph (2) are met.

(2) The conditions are that—

- (a) entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant has been given to the occupier,
- (b) asking for admission to the premises, or giving notice of the intention to apply for a warrant, would defeat the object of the entry,
- (c) entry is required urgently,
- (d) the premises are unoccupied or the occupier is temporarily absent.

(3) A warrant is valid for one month.

(4) A plant health inspector who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

Information notices

31.—(1) A plant health inspector or any other officer of the Scottish Ministers may by notice in writing require an appropriate person to give to the inspector or officer, within the time specified in the notice, any information which the person may possess as to—

- (a) the plants grown or products stored at any time on the premises specified in the notice,
- (b) any plant pest or plant, plant product or other object referred to in paragraph (4)(b),
- (c) the persons who have had, or are likely to have had, any plant pest or plant, plant product or other object referred to in paragraph (4)(b) in their possession or under their charge.

(2) The time within which the information is required to be given to the plant health inspector or other officer must be reasonable.

(3) An appropriate person must produce for examination by the plant health inspector or other officer any authorisation, official statement, certificate, plant passport, record, invoice or other document relating to a plant pest or any plant, plant product or other object specified in the notice.

(4) In this regulation, “appropriate person” means—

- (a) in relation to any premises to be specified in a notice under paragraph (1), a person who is the owner, occupier or other person in charge of the premises,
- (b) a person who has, has had, or is reasonably suspected by the plant health inspector or officer to have or have had, possession or charge of—
 - (i) a controlled plant pest,

- (ii) any plant, plant product or other object which was carrying a controlled plant pest or which was infested by or infected with a controlled plant pest,
- (iii) any plant, plant product or other object which the inspector or officer knows or suspects to have been imported into or exported from Scotland,
- (c) a person who, as auctioneer, salesman or otherwise, has sold, offered for sale or otherwise disposed of a controlled plant pest.

Failure to comply with a notice

32.—(1) If a person fails to comply with a notice served on that person under these Regulations, a plant health inspector may enter any affected premises at all reasonable times to take or cause to be taken any steps that the plant health inspector considers necessary to ensure compliance with the notice or to remedy the consequences of the failure to carry them out.

(2) A plant health inspector acting under paragraph (1) must, if requested to do so, show evidence of the inspector's authority to act.

(3) Paragraph (1) does not apply to any premises which are used wholly or mainly as a private dwelling unless 24 hours' notice has been given to the occupier.

(4) Paragraph (1) does not affect any right of entry conferred by a warrant issued by a sheriff, a summary sheriff or a justice of the peace.

(5) A plant health inspector may be accompanied by such other persons (including representatives of the European Commission) and bring onto the premises such equipment and vehicles as the inspector considers necessary.

(6) A person accompanying a plant health inspector under paragraph (5) may—

- (a) remain on the premises and from time to time re-enter the premises without a plant health inspector,
- (b) bring onto the premises any equipment or vehicles that the person considers necessary,
- (c) carry out work on the premises in a manner directed by a plant health inspector.

Disclosure of information held by Revenue and Customs

33.—(1) The Commissioners for Her Majesty's Revenue and Customs may disclose any information in their possession to the Scottish Ministers for the purposes of enabling or assisting the Scottish Ministers to carry out any function conferred on them under or by virtue of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.

(2) Nothing in paragraph (1) affects any other power or requirement of the Commissioners to disclose information.

PART 10

General and supplemental provisions relating to notices

Interpretation

34. In this Part, "premises" includes any place, including land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure.

Miscellaneous provisions as to notices

35.—(1) This regulation applies to any notice given by a plant health inspector under these Regulations.

- (2) The notice may—
- (a) specify—
 - (i) one or more requirements or alternative requirements,
 - (ii) the manner in which and the period in which any requirement or condition specified in the notice must be carried out or fulfilled,
 - (b) require the owner or any other person who appears to be in charge of the premises to which the notice relates to—
 - (i) notify the Scottish Ministers of any change in occupation of the premises, the date of the change and the name of the new occupier, and
 - (ii) inform the new occupier of the premises of the contents of the notice.
- (3) Any destruction, disposal, re-export or treatment of a plant, plant product or other object or a plant pest which is required to be carried out under the notice must be carried out, or arranged to be carried out, to the satisfaction of a plant health inspector by the person on whom the notice has been served from or at the place specified in the notice.
- (4) A plant health inspector may amend or withdraw the notice by a further notice.
- (5) The notice may define by reference to a map or plan or otherwise the extent of the premises referred to in the notice.

Service of notices

- 36.**—(1) A notice may be served on a registered operator by—
- (a) delivering it personally,
 - (b) leaving it at, or sending it by post to, the contact address of the registered operator,
 - (c) sending it to the email address that the operator has given to the Scottish Ministers for the service of notices.
- (2) A notice may be served on any other person by—
- (a) delivering it personally,
 - (b) leaving it at, or sending it by post to, the person’s last known place of abode or business, or
 - (c) sending it to any email address that the person has given to the Scottish Ministers for the service of notices.
- (3) If a notice is to be given by a plant health inspector to an occupier or other person in charge of premises and the last known place of abode or address of that person cannot be ascertained after reasonable enquiry, the notice may be served on that person by addressing it to “the occupier” and leaving it conspicuously affixed to an object on the premises for a period of seven days.
- (4) A notice may—
- (a) in the case of a body corporate (other than a limited liability partnership), be served on the secretary or clerk of that body at the address of the registered or principal office of that body,
 - (b) in the case of a partnership (other than a limited liability partnership), be served on a partner or a person having the control or management of the partnership business at the address of the principal office of the partnership,
 - (c) in the case of a limited liability partnership, be served on a member of the partnership at the address of the registered or principal office of the partnership.
- (5) For the purposes of paragraph (4), the principal office of a company registered outside the United Kingdom or a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (6) In this regulation—
- “notice” means a notice to be given by a plant health inspector under these Regulations,

“contact address”, in relation to a registered operator, means—

- (a) the address of the operator’s principal place of business in the United Kingdom, or
- (b) any other postal address in Scotland that the operator has given to the Scottish Ministers as a contact address for the service of notices.

PART 11

Offences

General

37.—(1) A person commits an offence if the person contravenes or fails to comply with—

- (a) paragraphs 2 or 4 of schedule 1,
- (b) paragraphs 2(1), (2), (3) or (4) or 4(1) of schedule 2,
- (c) regulations 24(1), 25(1) or 26(1),
- (d) regulation 27(2),
- (e) a provision of the EU Plant Health Regulation specified in Part 1 of schedule 3,
- (f) a provision of the Official Controls Regulation specified in Part 2 of schedule 3 in so far as it applies to plants, plant products or other objects which are subject to an EU plant health rule,
- (g) a provision in other EU legislation specified in Part 3 of schedule 3,
- (h) a provision of an EU instrument specified in schedule 4.

(2) But paragraph (1) does not apply to anything done under, or in accordance with—

- (a) an authorisation or permit which is granted under these Regulations or has effect under or by virtue of these Regulations,
- (b) an approval granted under regulation 13(6) or an approval referred to in regulation 53(1),
- (c) a notice which is given by a plant health inspector or the Scottish Ministers under these Regulations, or has effect under or by virtue of these Regulations.

Failure to comply with requirements of notices etc.

38. A person commits an offence if the person fails to comply with—

- (a) a provision or condition of a notice which has been served on the person under these Regulations or has effect under or by virtue of these Regulations,
- (b) a provision or condition of an authorisation or permit which has been granted to the person under these Regulations or has effect under or by virtue of these Regulations,
- (c) a provision or condition of a direction given under these Regulations.

Defence: reasonable excuse for failure to comply with requirements of notices etc.

39. It is a defence for a person charged with an offence under regulation 37 or 38 to show that the person had a reasonable excuse for contravening or failing to comply with the prohibition or requirement in question.

Provision of false or misleading information

40.—(1) A person commits an offence if, for the purposes of obtaining an authorisation or a permit or procuring the issue of a plant passport or certificate, the person—

- (a) knowingly or recklessly makes a statement or representation which is false in a material particular,

- (b) knowingly or recklessly furnishes a document or information which is false in a material particular,
- (c) intentionally fails to disclose any material information.

(2) In this regulation “certificate” means a certificate referred to in Articles 100, 101 and 102 of the EU Plant Health Regulation.

Improper use of plant passports or certificates

41.—(1) A person commits an offence if the person—

- (a) dishonestly issues a plant passport or a certificate,
- (b) dishonestly alters a plant passport or a certificate,
- (c) dishonestly re-uses a plant passport or a certificate.

(2) In this regulation, “certificate” has the same meaning as in regulation 40.

Obstruction etc.

42.—(1) A person commits an offence if the person—

- (a) intentionally obstructs a plant health inspector or an authorised person acting in the execution or enforcement of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations,
- (b) fails to give to a plant health inspector or an authorised person acting in the execution or enforcement of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations any assistance or information which the inspector or authorised person may reasonably require for those purposes,
- (c) fails to produce a document or record when required to do so by a plant health inspector or authorised person acting in the execution or enforcement of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.

(2) In paragraph (1), “authorised person” means a person authorised by the Scottish Ministers.

Defence: reasonable excuse for obstruction etc.

43. It is a defence for a person charged with an offence under regulation 42 to show that the person had a reasonable excuse for the obstruction or failure in question.

Offence relating to the disclosure of information held by Revenue and Customs

44. A person commits an offence if the person discloses any information received from the Commissioners for Her Majesty’s Revenue and Customs under regulation 33(1) and—

- (a) the information relates to a person whose identity is specified in the disclosure or can be deduced from the disclosure,
- (b) the disclosure is for a purpose other than specified in regulation 33(1), and
- (c) the Commissioners have not given their prior consent to the disclosure.

Defence: lawful disclosure of information held by Revenue and Customs

45. It is a defence for a person charged with an offence under regulation 44 to prove that the person reasonably believed that—

- (a) the disclosure was lawful, or
- (b) the information had previously been made available lawfully.

Offences by bodies corporate, etc.

46.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual, or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a Scottish partnership, a partner, or
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Penalties

47.—(1) A person guilty of an offence under regulation 37(1), 38, 40(1), 41(1) or 42(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person guilty of an offence under regulation 44 is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

PART 12

Miscellaneous

Minor and consequential amendments

48. Schedule 5 has effect and makes provision for minor and consequential amendments to secondary legislation.

Revocation

49. The instruments listed in column 1 of the table in schedule 6 are revoked to the extent specified in the corresponding entry in column 3 of that schedule.

Transitional provisions: licences under article 39(1) of the Forestry Order or article 41(1) of the 2005 Order

50.—(1) Any licence granted by the Forestry Commissioners or by the Scottish Ministers under article 39(1) of the Forestry Order or by the Scottish Ministers under article 41(1) of the 2005 Order, which is in force immediately before the commencement date, has effect during the relevant period as if it had been an authorisation granted by the Scottish Ministers in accordance with Article 5 of Commission Delegated Regulation (EU) 2019/829 on the date on which it was granted under the Forestry Order or the 2005 Order.

(2) Nothing in paragraph (1) affects anything carried out prior to the commencement date under, or for the purposes of, the licence.

(3) Any reference in the licence to the Forestry Order, the 2005 Order, Council Directive 2000/29/EC or Commission Directive 2008/61/EC is to be read as a reference to the corresponding provision in or under the EU Plant Health Regulation or these Regulations.

(4) In this regulation—

“Commission Delegated Regulation (EU) 2019/829” means Commission Delegated Regulation (EU) supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, authorising Member States to provide for temporary derogations in view of official testing, scientific or educational purposes, trials, varietal selections, or breeding(a),

“Council Directive 2000/29/EC” means 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(b),

“Commission 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 1 to 5 to Council 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(c),

“relevant period”, in relation to a licence, means—

- (a) if the licence expires on or after 31 December 2020, the period beginning on the commencement date and ending on 31 December 2020, or
- (b) if the licence expires before 31 December 2020, the period beginning with the commencement date and ending on the date of expiry of the licence specified in the licence.

Transitional provisions: other licences under the Forestry Order or the 2005 Order

51.—(1) Any licence granted by the Forestry Commissioners or by the Scottish Ministers under article 38(1)(a) of the Forestry Order or by the Scottish Ministers under article 40(a) of the 2005 Order and which has effect on the commencement date remains in force as if it had been an authorisation granted by the Scottish Ministers under regulation 21(2) on the date on which the licence was granted under the Forestry Order or the 2005 Order.

(2) Nothing in paragraph (1) affects anything carried out before the commencement date under, or for the purposes of, the licence.

(3) Any reference in the licence to the Forestry Order, the 2005 Order or Council Directive 2000/29/EC is to be read as a reference to the corresponding provision in or under the EU Plant Health Regulation or these Regulations.

(4) In paragraph (3), “Council Directive 2000/29/EC” has the same meaning as in regulation 50.

(a) OJ L 137, 23.5.2019, p.15.

(b) OJ L 169, 10.7.2000, p.1, as last amended by Commission Implementing Directive (EU) 2019/523 (OJ L 86, 28.3.2019, p.41). Council Directive 2000/29/EC is partially repealed by Regulation (EU) 2016/2031 (OJ L 317, 23.11.2016, p.4) with effect from 14 December 2019.

(c) OJ L 158, 18.6.2008, p.41, repealed by Commission Delegated Regulation (EU) 2019/829 (OJ L 137, 23.5.2019, p.15) with effect from 14 December 2019.

Transitional provisions: notices

52.—(1) Any notice given under the Forestry Order, the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006^(a) or the 2005 Order and which has effect on the commencement date—

- (a) remains in force and continues to have effect as if it were given under these Regulations for an equivalent purpose on the date on which it was given under the Forestry Order or the 2005 Order, and
- (b) is to be read with such modifications as are necessary for it to do so.

(2) In paragraph (1), the reference to any notice under the Forestry Order or the 2005 Order includes any official approval given for the purposes of the notice.

Transitional provisions: approvals granted under article 17(1) of the Forestry Order or article 17(1) of the 2005 Order

53.—(1) Any approval granted by the Forestry Commissioners or by the Scottish Ministers under article 17(1) of the Forestry Order or by the Scottish Ministers under article 17(1) of the 2005 Order, which is in force immediately before the commencement date, remains in force and continues to have effect during the relevant period.

(2) In paragraph (1), “relevant period”, in relation to an approval granted under article 17(1) of the Forestry Order or the 2005 Order, means—

- (a) if the approval expires on or after 13 December 2020, the period beginning on the commencement date and ending on 13 December 2020, or
- (b) if the approval expires before 13 December 2020, the period beginning on the commencement date and ending on the date of expiry of the approval specified in the approval.

FERGUS EWING

A member of the Scottish Government

St Andrew’s House,
Edinburgh
At 11.15 a.m. on 11th December 2019

(a) S.I. 2006/2695, amended by S.I. 2013/755 (W. 90) and S.I. 2019/734.

Temporary national measures

PART 1

Introduction

Interpretation

1. In this schedule, “introduce” means introduce, or cause to be introduced, into Scotland from a third country or another part of the Union territory.

PART 2

Plants, plant products or other objects from third countries

Temporary measures applying to the introduction of plants, plant products or other objects from third countries

2.—(1) No person may introduce any used machinery or vehicles which have been operated for agricultural or forestry purposes and exported from Switzerland unless the machinery or vehicles—

- (a) have been exported from an area established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr., or
- (b) in the case of any machinery or vehicles exported from an area infested with *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr., they have been cleaned and were free from soil and plant debris prior to being moved out of the area.

(2) In sub-paragraph (1), “ISPM 4” means International Standard for Phytosanitary Measures No. 4 of November 1995 on the 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^(a).

PART 3

Plants, plant products or other objects from another part of the Union territory

Temporary measures applying to the introduction of plants, plant products or other objects from another part of the Union territory

3. In this Part—

“move” means move within Scotland,

“official statement” means a statement issued by, or under the supervision of, an authorised representative of the competent authority in the member State of origin,

(a) Available from the IPPC Secretariat, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/en/core-activities/standards-setting/ispm/>

“Spain” means that part of Spain which is included within the Union territory for the purposes of the EU Plant Health Regulation, other than the Balearic Islands.

4. No person may introduce or move any plants, plant products or other objects described in column 2 of Table 1 unless they are accompanied by an official statement confirming the matters set out in the corresponding entry in column 3 of that Table.

Table 1

(1)	(2) <i>Description of plants, plant products or other objects</i>	(3) <i>Details of official statement</i>
1.	Tubers of <i>Solanum tuberosum</i> L., including those intended for planting which originate in Spain except where those tubers originate in an area which has been established in accordance with Article 5 of Decision 2012/270/EU	The official statement must confirm that the tubers have been washed so that there is no more than 0.1% of soil remaining
2.	Tubers of <i>Solanum tuberosum</i> L., originating in Poland	The official statement must confirm that the tubers have been found free from <i>Clavibacter michiganensis</i> ssp. <i>Sepedonicus</i> (Spieckermann and Kotthoff) David <i>et al.</i> in laboratory tests

Specific measures relating to certain solanaceous species

PART 1

General interpretation

1. In this schedule—

“basic seed potatoes” has the meaning given by regulation 2(1) of the Seed Potatoes Regulations,

“Directive 69/464/EEC” means Council Directive 69/464/EEC on control of Potato Wart Disease^(a),

“Directive 93/85/EEC” means Council Directive 93/85/EEC on the control of potato ring rot^(b),

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

“Directive 2007/33/EC” means Council Directive 2007/33/EC on the control of potato cyst nematodes and repealing Directive 69/465/EEC^(d),

“holding” means all the agricultural land owned by one business that is situated within one parish, or, if the land is contiguous, in a neighbouring parish,

“official”, in relation to any testing or other activity described in this schedule, means carried out by or performed by the Scottish Ministers, and “officially” is to be construed accordingly,

“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, including any strain or pathotype of any such nematode,

“Potato Ring Rot” means either the disease of potatoes which is caused by the bacterium *Clavibacter michiganensis* (Smith) Davis *et al.* spp. *Sependonicus* (Spieckermann and Kotthof) Davis *et al.* or that bacterium, as the context requires,

“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 requires,

“pre-basic seed potatoes” has the meaning given by regulation 2(1) of the Seed Potatoes Regulations,

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

“sampling unit” means an area of not less than 2 hectares, forming a field or part of a field with recognisable boundaries on at least two opposing sides,

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

(a) OJ L 323, 24.12.1969, p.1.

(b) OJ L 259, 18.10.1993, p.1, as last amended by Commission Directive 2006/56/EC (OJ L 182, 4.7.2006, p.1). Council Directive 93/85/EEC is prospectively repealed by Regulation (EU) 2016/2031 (OJ L 317, 23.11.2016, p.4) with effect from 1 January 2022.

(c) OJ L 235, 21.8.1998, p.1, as last amended by Commission Directive 2006/63/CE (OJ L 206, 27.7.2006, p.36). Council Directive 98/57/EC is prospectively repealed by Regulation (EU) 2016/2031 (OJ L 317, 23.11.2016, p.4) with effect from 1 January 2022.

(d) OJ L 156, 16.06.2007, p.12. Council Directive 2007/33/EC is prospectively repealed by Regulation (EU) 2016/2031 (OJ L 317, 23.11.2016, p.4) with effect from 1 January 2022.

“seed potato” means any potato intended for planting,

“Seed Potatoes Regulations” means the Seed Potatoes (Scotland) Regulations 2015(a).

PART 2

General provisions relating to the planting of certain solanaceous species

General restrictions on the planting of potatoes

2.—(1) A person must not knowingly plant, or knowingly cause or permit to be planted, any potatoes or any potatoes produced from potatoes, which have been grown in a third country other than Switzerland.

(2) A person must not knowingly plant, or knowingly cause or permit to be planted, any potatoes unless—

- (a) they derive in direct line from potato material which has been obtained under an officially approved programme in the European Union or Switzerland,
- (b) they have been found to be free from Potato Ring Rot in official tests using the methods set out in Annex 1 to Directive 93/85/EEC,
- (c) they have been found to be free from *Ralstonia solanacearum* (Smith) Yabuuchi *et al.* in official tests using the methods set out in Annex 2 to Directive 98/57/EC.

(3) A person must not knowingly plant, or knowingly cause or permit to be planted, any potatoes other than—

- (a) potatoes which may be marketed in Scotland under the Seed Potatoes Regulations,
- (b) one year’s direct progeny of the potatoes referred to in head (a) where that direct progeny has been grown by that person.

(4) Any person who is involved in the planting of potatoes must retain and make available to a plant health inspector the following documents in relation to the potatoes—

- (a) their official labels,
- (b) the invoices or delivery notes for the potatoes,
- (c) the crop inspection report issued under the Seed Potatoes Regulations, where potatoes, or their direct progeny, marketed or marketable under those Regulations were produced by the report holder.

(5) Sub-paragraphs (3) and (4) do not apply where—

- (a) the area to be planted is less than 0.1 hectare, or
- (b) the area is intended for the production of early potatoes.

(6) In sub-paragraph (5)(b), “early potatoes” means potatoes—

- (a) which are harvested before they are completely mature,
- (b) which are marketed immediately after they have been harvested, and
- (c) whose skins can be easily removed without peeling.

Special Measures

3.—(1) The special measures in sub-paragraph (2) apply to suppress or control the spread of the plant pests referred to in that sub-paragraph.

(2) The special measures are—

- (a) in respect of Potato Wart Disease, those set out in Part 3 of this schedule,

(a) S.S.I. 2015/395, as last amended by S.S.I. 2019/59.

- (b) in respect of Potato Cyst Nematode, those set out in Parts 4 and 5 of this schedule,
- (c) in respect of Potato Ring Rot, those set out in Part 6 of this schedule,
- (d) in respect of *Ralstonia solanacearum* (Smith) Yabuuchi *et al.*, those set out in Part 7 of this schedule.

(3) This paragraph is subject to any additional or stricter measures which a plant health inspector considers necessary under regulation 15 or 16.

Potato Cyst Nematode

4.—(1) Seed potatoes and the plants listed in Part 5 of this schedule must not be planted unless they were grown in a sampling unit which has undergone an official soil test carried out in accordance with Part 4 of this schedule and no Potato Cyst Nematode was found.

(2) The official soil test referred to in sub-paragraph (1) must be carried out—

- (a) in the period between the harvesting of the last crop in the sampling unit and the planting of the crop that requires the official soil test, and
- (b) no more than four years prior to the planting of the crop that requires the official soil test, provided that evidence is available to show that no Potato Cyst Nematode was found and that potatoes or the plants listed in Part 5 of this schedule were not present at the time of the official soil test and have not been grown in the sampling unit since that official soil test.

(3) Sub-paragraph (1) does not apply where—

- (a) in the case of seed potatoes and the plants listed in Part 5 of this schedule, they were—
 - (i) planted on the same holding where they were harvested, or
 - (ii) not grown in soil,
- (b) in the case of plants listed in Part 5 of this schedule, they have been washed or brushed until practically free of soil so that there is, to the satisfaction of a plant health inspector, no identifiable risk of Potato Cyst Nematode spreading, or
- (c) in the case of plants listed in Part 5 of this schedule, official tests show that the sampling unit in which they were grown has been free of Potato Cyst Nematode for 12 years before they were planted, or there is evidence that no potatoes or plants listed Part 5 of this schedule have been grown in that sampling unit in the previous 12 years.

Official surveys

5. A plant health inspector must perform an official survey on sampling units used for the production of potatoes, other than those intended for the production of seed potatoes, in accordance with Article 6 of Directive 2007/33/EC.

6. A plant health inspector may perform an official survey for the purposes of Article 4 of Commission Implementing Decision 2012/270/EU.

PART 3

Measures for the control of Potato Wart Disease

Interpretation

7.—(1) For the purposes of this Part of this schedule, a plot of land is to be regarded as a contaminated plot if Potato Wart Disease is confirmed by an official test to be present on at least one plant that is growing or was grown on that plot.

(2) In this Part of this schedule, “*Synchytrium endobioticum*” means *Synchytrium endobioticum* (Schilbersky) Percival.

Official measures relating to contaminated plots of land

8.—(1) A plant health inspector must in accordance with Article 2 of Directive 69/464/EEC demarcate any—

- (a) contaminated plot, and
- (b) a safety zone around that plot which is large enough to ensure the protection of the surrounding areas.

(2) A plant health inspector must serve a notice under regulation 15 requiring any potato tubers or haulms which are present on the contaminated plot, or which come from the contaminated plot, to be treated in such a way that the Potato Wart Disease present on them is destroyed.

(3) Where a plant health inspector is satisfied that any potato tubers or haulms are contaminated with Potato Wart Disease and the plant health inspector cannot determine whether those tubers or haulms have been present on a contaminated plot, the plant health inspector may serve a notice under regulation 15 which requires the whole batch containing the affected tubers or haulms to be treated in such a way that there is no risk of Potato Wart Disease spreading.

Prohibition on the planting of potatoes on contaminated plots

9.—(1) Where a contaminated plot is demarcated under paragraph 8(1) of this schedule—

- (a) no potatoes may be grown on it, and
- (b) no plants intended for transplanting may be grown, stored or moved on it.

(2) No person may grow potatoes in a safety zone demarcated under paragraph 8(1) of this schedule unless a plant health inspector is satisfied that they are of a variety which is resistant to the races of *Synchytrium endobioticum* found on the contaminated plot to which the safety zone relates.

(3) A potato variety is to be considered resistant to a particular race of *Synchytrium endobioticum* for the purposes of sub-paragraph (2) where that variety reacts to contamination by the pathogenic agent of that race in such a way that there is no danger of secondary infection.

Revocation of the demarcation of a contaminated plot

10. Where a plant health inspector is satisfied that *Synchytrium endobioticum* is no longer present on a plot which was demarcated under paragraph 8(1) of this schedule or on its associated safety zone, the plant health inspector must revoke that demarcation.

PART 4

Measures for the control of European populations of Potato Cyst Nematode

Standard sampling rate for official soil test

11. The official soil test referred to in paragraph 4(1) of this schedule must involve a soil sample of at least 1500 ml of soil per hectare (the “standard sampling rate”).

Lower sampling rate for official soil test

12. The standard sampling rate referred to in paragraph 11 of this schedule may be reduced to the lower sampling rate of 400 ml of soil per hectare (the “lower sampling rate”) if—

- (a) neither potatoes nor the plants listed in table A in Part 5 of this schedule have been grown or been present in the sampling unit in the six years prior to the official soil test,
- (b) no Potato Cyst Nematode has been found during the last two successive official soil tests carried out at the standard sampling rate and no potatoes or plants listed in table A in Part

5 of this schedule, other than those for which an official soil test is required, have been grown in the sampling unit after the first official soil test, or

- (c) no Potato Cyst Nematode or dead cysts of Potato Cyst Nematode have been found in the most recent official soil test carried out at the standard sampling rate and no potatoes or plants listed in table A in Part 5 of this schedule, other than those for which an official soil test is required, have been grown in the sampling unit since the last official soil test.

Official tests carried out before 1 July 2010

13. The results of other official tests carried out before 1 July 2010 may be considered as official soil tests as referred to in paragraph 12(b) and (c) of this schedule.

Further reduction of standard and lower sampling rates

14. The standard sampling rate and the lower sampling rate may be further reduced as follows—

- (a) in the case of the standard sampling rate, the first 8 hectares must be sampled at 1500 ml of soil per hectare, but may be reduced for each additional hectare to a minimum of 400 ml of soil per hectare, or
- (b) in the case of the lower sampling rate, the first 4 hectares must be sampled at 400 ml of soil per hectare, but may be further reduced for each additional hectare to a minimum of 200 ml of soil per hectare.

Continued use of lower and reduced sampling rates

15. The use of the lower and reduced sampling rates referred to in paragraphs 12 and 14 of this schedule may be continued in subsequent official soil tests until Potato Cyst Nematode is found in the sampling unit concerned.

Minimum size of soil sample

16. The minimum size of the soil sample in all cases is 100 ml of soil per sampling unit.

Action following official soil test or official survey

17. Following the official soil test referred to in paragraph 4(1) of this schedule, or an official survey referred to in paragraph 5 of this schedule, a plant health inspector must—

- (a) serve a notice on the occupier or other person in charge of the premises officially recording that the sampling unit is infested with Potato Cyst Nematode, or
- (b) officially record that no Potato Cyst Nematode was found in the sampling unit.

Notice that sampling unit is infested with Potato Cyst Nematode

18. Subject to paragraph 19 of this schedule, a notice under paragraph 17(a) of this schedule officially recording that the sampling unit is infested with Potato Cyst Nematode must contain the following restrictions—

- (a) no potatoes may be planted in the sampling unit,
- (b) no plants listed in table A in Part 5 of this schedule, intended for replanting, may be planted or stored in the sampling unit,
- (c) no plants listed in table B in Part 5 of this schedule, intended for replanting, may be planted in the sampling unit unless they have been washed or brushed until practically free of soil so that there is, to the satisfaction of a plant health inspector, no identifiable risk of Potato Cyst Nematode spreading, and
- (d) no plants listed in table C in Part 5 of this schedule may be planted in the sampling unit.

Sampling units infested with Potato Cyst Nematode: planting of potatoes not intended for production of seed potatoes

19. In the case of sampling units that are officially recorded as infested with Potato Cyst Nematode, the planting of potatoes, not intended for the production of seed potatoes, may be authorised by a plant health inspector by a notice in writing served on the occupier or other person in charge of the premises.

Notice authorising planting of potatoes not intended for production of seed potatoes in sampling units infested with Potato Cyst Nematode

20. Any notice served under paragraph 19 of this schedule must be in accordance with the terms of the official control programme aimed at the suppression of Potato Cyst Nematode notified to the European Commission in accordance with Article 9(2) of Directive 2007/33/EC and published from time to time by the Division of the Scottish Government Agriculture and Rural Economy Directorate known as SASA (formerly known as Science and Advice for Scottish Agriculture).

Notice of contamination

21. A plant health inspector must by notice in writing designate as contaminated any potatoes or plants listed in Part 5 of this schedule which—

- (a) have come from a sampling unit officially recorded under paragraph 17 of this schedule as infested with Potato Cyst Nematode, or
- (b) have come into contact with soil in which Potato Cyst Nematode was found.

Prohibitions following issue of notice of contamination

22. Where any potatoes or plants listed in Part 5 of this schedule have been designated as contaminated under paragraph 21 of this schedule—

- (a) in the case of seed potatoes and the plants listed in table A in Part 5 of this schedule, these must not be planted unless they have been disinfested to the satisfaction of a plant health inspector so that there is no risk of Potato Cyst Nematode spreading,
- (b) in the case of plants listed in table B in Part 5 of this schedule, these must not be planted unless they have been washed or brushed until practically free of soil so that there is no identifiable risk of Potato Cyst Nematode spreading,
- (c) in the case of plants listed in table C in Part 5 of this schedule, these must not be planted, and
- (d) in the case of potatoes intended for industrial processing or grading, these must not be moved except in accordance with an authorisation given under paragraph 23 of this schedule.

Notice of contamination: authorisation for movement of potatoes for industrial processing or grading

23. A plant health inspector may authorise the movement of potatoes designated as contaminated under paragraph 21 of this schedule for the purposes of industrial processing or grading providing that such authorisation—

- (a) is given by notice in writing, and
- (b) requires the potatoes to be delivered to a processing or grading plant that has appropriate and officially approved waste disposal procedures that ensure that there is no risk of Potato Cyst Nematode spreading.

Notices of infestation or contamination: revocation

24. A notice under paragraph 17(a) or 19 of this schedule may be revoked if, following a further official soil test, no Potato Cyst Nematode is found in the sampling unit after 6 years from —

- (a) the date of the last official soil test confirming the presence of Potato Cyst Nematode, or
- (b) the harvesting of the last potato crop in the sampling unit.

Further investigations

25. If any suspected occurrence or confirmed presence of Potato Cyst Nematode in Scotland results from a breakdown or change in the effectiveness of a resistant potato variety which relates to an exceptional change in the composition of nematode species, pathotype or virulence group, the Scottish Ministers must ensure that this occurrence is investigated and, where applicable, the pathotype and virulence group of the Potato Cyst Nematode involved is confirmed by appropriate methods.

PART 5

Potato Cyst Nematode - species to which controls apply

Table A

Host plants with roots:	<i>Capsicum spp.</i> , <i>Lycopersicon lycopersicum</i> (L.) Karsten ex Farw., <i>Solanum melongena</i> L.
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Table B

Other plants with roots:	<i>Allium porrum</i> L., <i>Beta vulgaris</i> L., <i>Brassica spp.</i> , <i>Fragaria</i> L., <i>Asparagus officinalis</i> L.
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Table C

Bulbs, tubers and rhizomes, not washed or brushed until practically free of soil so that there is no identifiable risk of Potato Cyst Nematode spreading, grown in soil and intended for planting, other than those for which there must be evidence by their packaging or by other means that they are intended for sale to final consumers not involved in professional plant or cut flower production:	<i>Allium ascalonicum</i> L., <i>Allium cepa</i> L., <i>Dahlia spp.</i> , <i>Gladiolus</i> Tourn. Ex L., <i>Hyacinthus spp.</i> , <i>Iris spp.</i> , <i>Lilium spp.</i> , Narcissus L., Tulipa L.
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PART 6

Measures for the control of Potato Ring Rot

Interpretation

26. In this Part of this schedule “specified plant material” means tubers or plants of *Solanum tuberosum* L.

Official surveys and testing

27.—(1) The Scottish Ministers must ensure that systematic official surveys for Potato Ring Rot are carried out in Scotland on tubers of *Solanum tuberosum* L. and, where appropriate, on plants of *Solanum tuberosum* L., in accordance with Article 2(1) of Directive 93/85/EEC.

(2) Where the presence of Potato Ring Rot in specified plant material is suspected, the Scottish Ministers must ensure that—

- (a) official testing is carried out using the method set out in Annex 1 to Directive 93/85/EEC and in accordance with the conditions specified in point 1 of Annex 2 to Directive 93/85/EEC to confirm or refute its presence,
- (b) the following are retained and appropriately conserved pending completion of the official testing—
 - (i) all tubers sampled, and wherever possible, all plants sampled,
 - (ii) any remaining extract and additional preparation material for the screening tests,
 - (iii) all relevant documentation, and
- (c) pending the confirmation or refutation of its presence, where suspect diagnostic visual symptoms of Potato Ring Rot have been seen or symptoms of Potato Ring Rot have been identified by a positive immunofluorescence test or other appropriate positive test—
 - (i) the movement of all lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except where it has been established that there is no identifiable risk of Potato Ring Rot spreading,
 - (ii) steps are taken to trace the origin of the suspected occurrence, and
 - (iii) additional appropriate precautionary measures based on the level of estimated risk to prevent any spread of the plant pest are taken.

(3) A notice under regulation 15 may contain measures for the purposes of sub-paragraph (2)(c)(i) to (iii).

Measures to be taken following the confirmation of the presence of Potato Ring Rot

28.—(1) If the presence of Potato Ring Rot is confirmed in a sample of specified plant material following official testing carried out pursuant to paragraph 27(2)(a) of this schedule or sub-paragraph (2), the Scottish Ministers must ensure that—

- (a) the specified plant material, the consignment or lot and any object from which the sample was taken and, where appropriate, the place of production and field from which the specified plant material was harvested are designated as contaminated by a plant health inspector,
- (b) a plant health inspector determines the extent of the probable contamination through pre- or post-harvest contact or through any production link with anything designated as contaminated under head (a), taking into account the provisions in point 1 of Annex 3 to Directive 93/85/EEC,
- (c) a zone is demarcated by a plant health inspector on the basis of the designation made under head (a), taking into account the provisions in point 2 of Annex 3 to Directive 93/85/EEC.

(2) Where specified plant material has been designated as contaminated under sub-paragraph (1)(a), the Scottish Ministers must ensure that testing is carried out on potato stocks which are clonally related to that specified plant material in the manner specified in paragraph 27(2) of this schedule in order to determine the probable primary source of infection and the extent of the probable contamination.

(3) Any such testing must be carried out on as much specified plant material as is necessary to determine the probable primary source of infection and the extent of the probable contamination.

(4) Where any specified plant material or object is determined by a plant health inspector under sub-paragraph (1)(b) to be probably contaminated, the plant health inspector must designate that material or object as probably contaminated.

(5) Any designation by a plant health inspector under sub-paragraph (1)(a) or (4) must be made by notice served under regulation 15.

Restrictions in relation to specified plant material or objects contaminated or probably contaminated with Potato Ring Rot

29.—(1) Where specified plant material is designated by a plant health inspector to be contaminated with Potato Ring Rot in accordance with paragraph 28(1)(a) of this schedule—

- (a) no person may—
 - (i) knowingly plant that material, or
 - (ii) knowingly cause or permit that plant material to be planted, and
- (b) a notice under regulation 15 must require that material to be disposed of in accordance with sub-paragraph (2).

(2) Material can be required to be disposed of—

- (a) by destruction, or
- (b) by any other measure that complies with point 1 of Annex 4 to Directive 93/85/EEC.

(3) Where specified plant material is designated by a plant health inspector to be probably contaminated in accordance with paragraph 28(4) of this schedule, a plant health inspector must serve a notice under regulation 15 requiring that—

- (a) no person may—
 - (i) knowingly plant that material, or
 - (ii) knowingly cause or permit that material to be planted, and
- (b) the material must be used or disposed of in accordance with point 2 of Annex 4 to Directive 93/85/EEC.

(4) Where any machinery, vehicle, vessel, store or any part of such machinery, vehicle, vessel or store, or any object (including packaging material) has been designated by a plant health inspector as contaminated in accordance with paragraph 28(1)(a) of this schedule or as probably contaminated in accordance with paragraph 28(4) of this schedule, a plant health inspector must serve a notice under regulation 15 requiring that it is—

- (a) disposed of by destruction, or
- (b) cleansed and disinfected, such that there is no identifiable risk of Potato Ring Rot spreading.

(5) Anything cleansed and disinfected in accordance with sub-paragraph (4)(b) is no longer to be treated as contaminated for the purposes of Directive 93/85/EEC.

Contaminated place of production – notice (general)

30. Where a place of production has been designated as contaminated by a plant health inspector in accordance with paragraph 28(1)(a) of this schedule, the plant health inspector must serve a notice under regulation 15 which complies with the applicable requirements of paragraphs 31 to 35 of this schedule.

Contaminated place of production – notice in relation to any field also designated as contaminated

31. Subject to paragraph 34(1) of this schedule, where a place of production is designated by a plant health inspector as contaminated in accordance with paragraph 28(1)(a) of this schedule, the notice referred to in paragraph 30 of this schedule must require that, with regard to any field at that place, which has also been so designated, the measures referred to in paragraph 32(1) or (3) of this schedule apply.

Measures in relation to a contaminated place of production

32.—(1) The measures referred to in paragraph 31 of this schedule are—

- (a) from the date of the receipt of the notice and for at least three growing years from the start of the next growing year—
 - (i) such measures as may be required to eliminate volunteer potato plants and other naturally found host plants of Potato Ring Rot, and
 - (ii) that the following must not be planted—
 - (aa) tubers, plants or true seeds of potato,
 - (bb) naturally found host plants of Potato Ring Rot, and
 - (cc) crops for which there is a risk of Potato Ring Rot surviving or spreading,
- (b) in the first potato cropping season following the period referred to in head (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 that the harvested tubers are subjected to official testing using the method set out in Annex 1 to Directive 93/85/EEC, and
- (c) in the potato cropping season which follows that referred to in head (b) and following an appropriate rotation cycle (which must 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.

(2) Where a plant health inspector serves a notice requiring the measures specified in sub-paragraph (1), the Scottish Ministers must ensure that an official survey is carried out in relation to the field in which potatoes mentioned in sub-paragraph (1)(c) are planted, in accordance with Article 2 of Directive 93/85/EEC.

(3) The measures referred to in paragraph 31 of this schedule are—

- (a) from the date of receipt of the notice and for four growing years from the start of the next growing year—
 - (i) such measures as may be required to eliminate volunteer potato plants and other naturally found host plants of Potato Ring Rot, and
 - (ii) that the field must be maintained in bare fallow, permanent pasture with frequent close cutting or intensive grazing, and
- (b) in the first potato cropping season following the period referred to in head (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, and that the harvested tubers are subjected to official testing using the method set out in Annex 1 to Directive 93/85/EEC.

Contaminated place of production – notice in relation to fields other than those referred to in paragraph 31

33. Where a plant health inspector has designated a place of production as contaminated in accordance with paragraph 28(1)(a) of this schedule, the notice referred to in paragraph 30 of this

schedule must require that with regard to any fields at that place other than those referred to in paragraph 31 of this schedule—

- (a) in the cases where a plant health inspector is satisfied that the risk of volunteer potato plants and other naturally-found host plants of Potato Ring Rot has been eliminated, that from the date of receipt of the notice until the end of the next consecutive growing year, the following must not be planted—
 - (i) tubers, plants or true seed of potato,
 - (ii) naturally found host plants of Potato Ring Rot, or
 - (iii) pre-basic seed potatoes or basic seed potatoes, except for the production of ware potatoes only,
- (b) in the second growing year following the period referred to in sub-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 a plant health inspector as contaminated in accordance with paragraph 28(1)(a) of this schedule, may be planted, for seed or ware production,
- (c) for at least the third growing year following the period referred to in sub-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 sub-paragraphs (a), (b) and (c), measures must be taken to eliminate volunteer potato plants and naturally found host plants of Potato Ring Rot and that official testing be carried out on harvested tubers in each field using the method set out in Annex 1 to Directive 93/85/EEC.

Contaminated place of production – notice and authorisation where unit of protected crop production also designated as contaminated

34.—(1) Where a plant health inspector has designated a place of production as contaminated in accordance with paragraph 28(1)(a) of this schedule and a unit of protected crop production at that place has also been so designated and complete replacement of the growing medium is possible in that unit, the plant health inspector must serve a notice requiring that no person may plant in the unit any potato tubers, plants or true seeds without the written authority of a plant health inspector.

(2) A plant health inspector may not grant an authorisation under sub-paragraph (1) unless—

- (a) all of the measures to eliminate Potato Ring Rot and to remove all host plants which are specified in a notice in relation to the place of production in which the unit of protected crop production is situated have been complied with,
- (b) the growing medium in the unit has been completely changed, and
- (c) the unit and all equipment used on the unit has been cleansed and disinfected to eliminate Potato Ring Rot and to remove all host plant material.

(3) The authorisation referred to in sub-paragraph (1) may require that where an authorisation is granted for potato production, production must be from basic seed potatoes and pre-basic seed potatoes or from mini-tubers or micro-plants derived from officially tested sources.

Contaminated place of production – notice under paragraph 30 requiring cleansing and disinfecting

35. Except where the Scottish Ministers have served a notice under paragraph 36(2) of this schedule, in cases where a place of production is designated by a plant health inspector to be contaminated in accordance with paragraph 28(1)(a) of this schedule, the notice referred to in paragraph 30 of this schedule may require that upon receipt of the notice and throughout the subsequent growing years up to and including the first potato cropping season permitted by paragraph 32(1)(b) or (3)(b) of this schedule, all machinery and storage facilities at the place of production which are used for potato production must be cleansed and disinfected as appropriate in accordance with paragraph 29(4)(b) of this schedule.

Demarcated zone

36.—(1) This paragraph applies where a plant health inspector has demarcated a zone pursuant to paragraph 28(1)(c) of this schedule.

(2) The plant health inspector may, by notice, specify—

- (a) how long the zone is to remain demarcated, and
- (b) the measures which apply in the demarcated zone.

(3) A notice under sub-paragraph (2)—

- (a) must be in writing,
- (b) must describe the extent of the demarcated zone,
- (c) must specify the date on which each measure takes effect,
- (d) must be published in a manner appropriate to bring it to the attention of the public, and
- (e) may be amended, suspended or revoked, in whole or in part, by further notice.

(4) Any premises which are partly within and partly outside a demarcated zone must be treated as within that zone for the purposes of this Part of this schedule, except where the part which is outside the demarcated zone is not in Scotland.

(5) A notice published in accordance with sub-paragraph (3)(d) is to be treated as having been served on—

- (a) any occupier or other person in charge of any premises within the demarcated zone, and
- (b) any person who operates machinery or carries out any other activity in relation to the production of potatoes within the demarcated zone.

(6) A notice under sub-paragraph (2) must specify that—

- (a) any machinery or storage facilities at premises within the demarcated zone which are used for potato production must be cleansed and disinfected in an appropriate manner so that there is no identifiable risk of Potato Ring Rot surviving or spreading,
- (b) during the specified period—
 - (i) only pre-basic seed potatoes or basic seed potatoes or seed potatoes grown under official control may be planted, and
 - (ii) any seed potatoes grown in a place of production which is possibly contaminated must be officially tested after harvesting, and
- (c) during the specified period—
 - (i) potatoes intended for planting must be handled separately from all other potatoes at premises within the zone, or
 - (ii) a system of cleansing and, where appropriate, disinfection must be carried out between the handling of seed and ware potatoes.

(7) The plant health inspector must ensure that during the specified period—

- (a) premises growing, storing or handling potato tubers and premises which operate potato machinery under contract are supervised by a plant health inspector,
- (b) an official survey is carried out in accordance with Article 2 of Directive 93/85/EEC,
- (c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.

(8) For the purposes of sub-paragraphs (6) and (7), the “specified period” means the period specified in the notice, which must be at least three growing seasons following the year in which the relevant zone was demarcated.

PART 7

Measures for the control of *Ralstonia solanacearum* (Smith) Yabuuchi *et al.*

Interpretation

37. In this Part of this schedule—

“specified plant material” means plants (including tubers), other than true seed, of *Solanacearum tuberosum* L., and plants, other than fruit or seeds, of *Lycopersicon lycopersicum* (L) Karsten ex Farw., and

“*R. solanacearum*” means *Ralstonia solanacearum* (Smith) Yabuuchi *et al.*, the cause of Potato brown rot.

Official surveys and testing

38.—(1) The Scottish Ministers must ensure that annual systematic official surveys are carried out to identify the presence of *R. solanacearum* on specified plant material originating in Scotland in accordance with Article 2 of Directive 98/57/EC.

(2) Where the presence of *R. solanacearum* is suspected, the Scottish Ministers must ensure that—

- (a) official testing is carried out to confirm or refute its presence—
 - (i) in the case of specified plant material, using the method set out in Annex 2 to Directive 98/57/EC and in accordance with the conditions specified in point 1 of Annex 3 to Directive 98/57/EC,
 - (ii) in any other case, using any officially approved method,
- (b) pending the confirmation or refutation of its presence, where suspect diagnostic visual symptoms of *R. solanacearum* have been seen and a positive result in a rapid screening test has been obtained or a positive result in the screening tests specified in point 2 of section 1, and in section 3, of Annex 2 to Directive 98/57/EC has been obtained—
 - (i) the movement of all plants and tubers from all crops, lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except where it has been established that there is no identifiable risk of *R. solanacearum* spreading,
 - (ii) steps are taken to trace the origin of the suspected occurrence, and
 - (iii) additional appropriate precautionary measures based on the level of estimated risk are taken to prevent any spread of *R. solanacearum*.

(3) A notice under regulation 15 may contain measures for the purposes of sub-paragraph (2)(b)(i) to (iii).

Measures to be taken following the confirmation of the presence of *R. solanacearum*

39.—(1) If the presence of *R. solanacearum* is confirmed following official testing carried out pursuant to paragraph 38(2) of this schedule, the Scottish Ministers must ensure that the actions specified in sub-paragraphs (2) to (4) are taken in accordance with sound scientific principles, the biology of *R. solanacearum* and the relevant production, marketing and processing systems of host plants of *R. solanacearum*.

(2) In the case of specified plant material, the actions are—

- (a) an investigation by a plant health inspector to determine the extent and the primary sources of the contamination in accordance with Annex 4 to Directive 98/57/EC,
- (b) further official testing, including on all clonally related seed potato stocks,

- (c) the designation of the following as contaminated by a plant health inspector—
 - (i) the specified plant material and consignment or lot from which the sample was taken,
 - (ii) any objects which have been in contact with that sample,
 - (iii) any unit or field of protected crop production and any place of production of the specified plant material from which the sample was taken,
- (d) a determination by a plant health inspector of the extent of probable contamination through pre- or post-harvest contact, through production, irrigation or spraying links or through clonal relationship,
- (e) the demarcation of a zone by a plant health inspector on the basis of the designation under head (c), the determination made under head (d) and the possible spread of *R. solanacearum* in accordance with point 2(i) of Annex 5 to Directive 98/57/EC.

(3) In the case of host plants, other than specified plant material, where the production of specified plant material is identified to be at risk by a plant health inspector, the actions are—

- (a) an investigation by a plant health inspector to determine the extent and the primary sources of the contamination in accordance with Annex 4 to Directive 98/57/EC,
- (b) the designation by a plant health inspector of host plants from which the sample was taken as contaminated,
- (c) a determination of the probable contamination by a plant health inspector,
- (d) the demarcation of a zone by a plant health inspector on the basis of the designation under head (b), the determination made under head (c) and the possible spread of *R. solanacearum* in accordance with point 2(i) of Annex 5 to Directive 98/57/EC.

(4) In the case of surface water and associated wild solanaceous host plants where production of specified plant material is identified by a plant health inspector to be at risk through irrigation, spraying or flooding of surface water, the actions are—

- (a) an investigation by a plant health inspector to establish the extent of the contamination, which includes an official survey at appropriate times on samples of surface water and, if present, wild solanaceous host plants,
- (b) the designation of surface water from which the sample was taken by a plant health inspector, to the extent appropriate and on the basis of the investigation under head (a),
- (c) a determination by a plant health inspector of the probable contamination on the basis of the designation made under head (b),
- (d) the demarcation of a zone by a plant health inspector on the basis of the designation under head (b), the determination made under head (c) and the possible spread of *R. solanacearum* in accordance with point 2(ii) of Annex 5 to Directive 98/57/EC.

Restrictions in relation to specified plant material or objects contaminated or probably contaminated with *R. solanacearum*

40.—(1) Where specified plant material is designated by a plant health inspector to be contaminated with *R. solanacearum* in accordance with paragraph 39(2)(c) of this schedule—

- (a) no person may—
 - (i) knowingly plant that material, or
 - (ii) knowingly cause or permit that plant material to be planted, and
- (b) the material must be subjected to a provision in point 1 of Annex 6 to Directive 98/57/EC.

(2) Where specified plant material is determined by a plant health inspector to be probably contaminated in accordance with paragraph 39(2)(d) of this schedule, a plant health inspector must serve a notice under regulation 15 requiring that—

- (a) no person may—
 - (i) knowingly plant that material, or

- (ii) knowingly cause or permit that material to be planted, and
 - (b) the material must be used or disposed of in accordance with point 2 of Annex 6 to Directive 98/57/EC.
- (3) A notice under regulation 15 must require that any machinery, vehicle, vessel, store, or any part of such machinery, vehicle, vessel or store and any other object, including packaging material designated by any plant health inspector to be contaminated in accordance with paragraph 39(2)(c) of this schedule, or probably contaminated in accordance with paragraph 39(2)(d) or (3)(c) of this schedule, must either be—
- (a) disposed of by destruction, or
 - (b) cleansed and, where appropriate, disinfected, such that there is no identifiable risk of *R. solanacearum* surviving or spreading.
- (4) Anything cleansed and, where appropriate, disinfected in accordance with sub-paragraph (3)(b) is no longer to be treated as contaminated for the purposes of Directive 98/57/EC.

Contaminated place of production – notice (general)

41. In relation to a place of production which has been designated by a plant health inspector as contaminated in accordance with paragraph 39(2)(c) of this schedule and which is in a zone which has been demarcated by a plant health inspector in accordance with paragraph 39(2)(e), (3)(d) or (4)(d) of this schedule, the plant health inspector must serve a notice under regulation 15 which complies with the applicable requirements of paragraphs 42 to 46 of this schedule.

Contaminated place of production – notice in relation to any field also designated as contaminated

42. Subject to paragraph 45(1) of this schedule, where a place of production is designated by a plant health inspector as contaminated in accordance with paragraph 39(2)(c) of this schedule, the notice referred to in paragraph 41 of this schedule must require that, with regard to any field at that place, which has also been so designated, the measures referred to in paragraph 43(1) or (2) of this schedule apply.

Measures in relation to contaminated place of production

- 43.—(1) The measures referred to in paragraph 42 of this schedule are—
- (a) from the date of the receipt of the notice and for at least four growing years from the start of the next growing year—
 - (i) such measures as may be required to eliminate volunteer potato or tomato plants as well as other host plants of *R. solanacearum* including solanaceous weeds as appropriate, and
 - (ii) that the following must not be planted—
 - (aa) potato tubers, plants and true seeds,
 - (bb) tomato plants and seeds,
 - (cc) taking account of the biology of *R. solanacearum*, other host plants and plants of species of *Brassica* for which there is a risk of *R. solanacearum* surviving, or
 - (dd) crops for which there is a risk of *R. solanacearum* spreading,
 - (b) in the first potato or tomato cropping season following the period referred to in head (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 found to be free, during official inspections, 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 that harvested tubers or tomato plants are subjected to official testing using the method set out in Annex 2 to Directive 98/57/EC, and

- (c) in the potato or tomato cropping season which follows that referred to in head (b), that there must be an appropriate rotation cycle which must be at least two years where basic seed potatoes or pre-basic seed potatoes are planted.
- (2) The measures referred to in paragraph 42 of this schedule are—
- (a) from the date of receipt of the notice and for five growing years from the start of the next growing year—
 - (i) such measures as may be required to eliminate volunteer potato and tomato plants as well as other naturally found host plants of *R. solanacearum* including solanaceous weeds as appropriate, and
 - (ii) that the field or unit of production must be maintained during the first three growing years—
 - (aa) in bare fallow,
 - (bb) in cereals if the plant health inspector is satisfied that there is no identifiable risk of *R. solanacearum* spreading,
 - (cc) in permanent pasture with frequent close cutting or intensive grazing, or
 - (dd) as grass for seed production,
 followed by planting in the succeeding two growing years with non-host plants of *R. solanacearum* for which there is no identified risk of that organism surviving or spreading, and
 - (b) in the first potato or tomato cropping season which follows the period referred to in head (a), if potatoes are to be planted, that only basic seed potatoes and pre-basic seed potatoes may be planted, and only for seed or ware production in circumstances where—
 - (i) the field or the unit has been found free from volunteer potato and tomato plants and other host plants, including solanaceous weeds, during official inspections of *R. solanacearum*, for at least the two consecutive growing years prior to planting, and
 - (ii) that harvested tubers or tomato plants have been subjected to official testing using the method set out in Annex 2 to Directive 98/57/EC.

Contaminated place of production – notice in relation to fields other than those referred to in paragraph 42

44. Where a place of production is designated by a plant health inspector as contaminated in accordance with paragraph 39(2)(c) of this schedule and with regard to any fields at that place other than those referred to in paragraph 42 of this schedule the plant health inspector is satisfied that the risk of volunteer potato and tomato plants and other naturally found host plants of *R. solanacearum* has been eliminated, the notice referred to in paragraph 41 of this schedule must 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* must not be planted save that 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 the EU Plant Health Regulation 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 a plant health inspector as contaminated in accordance with paragraph 39(2)(c) of this schedule 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 the EU Plant Health Regulation 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 a plant health inspector as contaminated in accordance with paragraph 39(2)(c) of this schedule 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 the EU Plant Health Regulation or tomato plants grown from such plants under official control may be planted, for plant or fruit production,
- (d) from the date of the receipt of the notice and in each of the growing years referred to in this paragraph, measures must be taken to eliminate volunteer potato plants and other naturally found host plants of *R. solanacearum* as appropriate, and
- (e) official inspections of growing crops at appropriate times and official testing of harvested potatoes are carried out in accordance with the method set out in Annex 2 to Directive 98/57/EC.

Contaminated place of production – notice and authorisation where unit of protected crop production also designated as contaminated

45.—(1) Where a place of production is designated by a plant health inspector to be contaminated in accordance with paragraph 39(2)(c) of this schedule and a unit of protected crop production at that place has also been so designated and complete replacement of the growing medium is possible in that unit, the notice referred to in paragraph 41 of this schedule must require that no person may plant in the unit any potato tubers, potato plants or true seeds or other host plants of *R. solanacearum* including tomato plants and seeds without the written authorisation of a plant health inspector.

- (2) A plant health inspector may not grant an authorisation under sub-paragraph (1) unless—
 - (a) all of the measures to eliminate *R. solanacearum* and to remove all host plants which are specified in a notice in relation to the place of production in which the unit is situated have been complied with,
 - (b) the growing medium in the unit has been completely changed, and
 - (c) the unit and all equipment used on the unit has been cleansed and disinfected to eliminate *R. solanacearum* and to remove all host plant material.
- (3) The authorisation referred to in sub-paragraph (1) may require that—
 - (a) where the authorisation is granted for potato production, production must be from basic seed potatoes and pre-basic seed potatoes or from mini-tubers or micro-plants derived from officially tested sources,
 - (b) where the authorisation is granted for tomato production, production must be from seed which meets the requirements of the EU Plant Health Regulation or, if vegetatively propagated, from tomato plants produced from such seed and grown under official control, and
 - (c) controls on irrigation and spraying programmes, which may include a prohibition on such programmes, must be introduced as appropriate to prevent the spread of *R. solanacearum*.

Contaminated place of production – notice under paragraph 41

46. Except where the Scottish Ministers have published a notice under paragraph 47(1) of this schedule, where a place of production is designated by a plant health inspector to be contaminated

in accordance with paragraph 39(2)(c) of this schedule, the notice referred to in paragraph 41 of this schedule must require that upon receipt of the notice and after the first subsequent growing year—

- (a) all machinery and storage facilities at the place of production which are used for potato or tomato production must be cleansed and, where appropriate, disinfected in accordance with paragraph 40(3)(b) of this schedule, and
- (b) such controls on irrigation and spraying programmes, which may include a prohibition on such programmes, must be introduced as the plant health inspector considers appropriate for the prevention of the spread of *R. solanacearum*.

Demarcated zones

47.—(1) The Scottish Ministers must, where it is considered necessary to ensure that any provision of sub-paragraph (5) is complied with, make notice available to the public, by such measures as they consider appropriate, of the demarcation under paragraphs 39(2)(e), (3)(d) or (4)(d) of this schedule of any zone and such notice must—

- (a) subject to head (b), include a declaration that the provisions of sub-paragraph (5) apply in the demarcated zone with effect from the date which is specified in the notice, and
- (b) where appropriate, specify those areas of surface water within the zone to which the prohibition on irrigation and spraying in sub-paragraph (5) is to apply.

(2) The zone remains demarcated for the purposes of this Part of this schedule until such date as may be specified in the notice referred to in sub-paragraph (1) or in any further notice relating to the demarcated zone which a plant health inspector may issue varying the controls in the demarcated zone or its extent or ending it.

(3) For the purposes of this Part of this schedule, a notice made available to the public in accordance with sub-paragraph (1) is deemed to have been served on—

- (a) any occupier or other person in charge of any premises within the demarcated zone,
- (b) any person—
 - (i) with a right to use any surface water, or
 - (ii) who has on premises in their occupation or of which they have charge any surface water, designated as contaminated pursuant to sub-paragraph (5)(b), and
- (c) any person who operates machinery or carries out any other activity in relation to the production of potatoes or tomatoes within the demarcated zone.

(4) Any premises which are partly inside and partly outside a demarcated zone are deemed to be wholly inside that zone for the purposes of this Part of this schedule, except where the part which is outside the demarcated zone is not in Scotland.

(5) When a declaration has been made pursuant to sub-paragraph (1) that the provisions of this paragraph apply—

- (a) where the zone has been demarcated in accordance with paragraph 39(2)(e) or 39(3)(d) of this schedule—
 - (i) machinery and storage facilities at premises within the zone which are used for growing, storing or handling potato tubers or tomatoes within the zone and premises within the zone from which machinery for potato and tomato production is operated under contract, must be cleansed and, where appropriate, disinfected in accordance with paragraph 40(3)(b) of this schedule,
 - (ii) with regard to potato crops in the zone, only basic seed potatoes and pre-basic seed potatoes grown under official control may be planted,
 - (iii) during the specified period seed potatoes must be handled separately from all other potatoes at all premises within the zone, or a system of cleansing and, where appropriate, disinfection must be carried out between the handling of seed and ware potatoes, and

- (iv) with regard to tomato crops in the zone, during the specified period only tomato plants grown from seed which meets the requirements of the EU Plant Health Regulation or, if vegetatively propagated, tomato plants produced from such seed and grown under official control may be planted,
 - (b) where surface water has been designated by a plant health inspector as contaminated in accordance with paragraph 39(4)(b) of this schedule—
 - (i) the use of water designated as contaminated for the irrigation and spraying of specified plant material and where appropriate, other host plants, is prohibited without the written authorisation of a plant health inspector, and
 - (ii) if liquid waste discharges have been contaminated, the disposal of waste from industrial processing or packaging premises which handle specified plant material must be carried out under the supervision of a plant health inspector.
 - (6) The Scottish Ministers must ensure that during the specified period—
 - (a) premises growing, storing or handling potato tubers and premises which operate potato machinery under contract are supervised by plant health inspectors,
 - (b) an official survey is carried out in accordance with Article 2 of Directive 98/57/EC,
 - (c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.
- (7) For the purposes of sub-paragraphs (5) and (6), “the specified period” means the period specified in the notice referred to in sub-paragraph (1), which must be at least three growing seasons following the year in which the relevant zone was demarcated.

SCHEDULE 3

Regulation 37(1)(e) to (g)

Offences: relevant provisions in the EU Regulations

PART 1

The EU Plant Health Regulation

<i>Provision of the EU Plant Health Regulation</i>	<i>Subject matter</i>
Article 5(1) (as read with Article 8(1))	Prohibits the introduction of a Union quarantine pest into the Union territory, the movement of a Union quarantine pest within the Union territory or the holding, multiplication or the release of Union quarantine pest in the Union territory (a) .
Article 9(3) (as read with Article 33(1))	Requires professional operators immediately to notify competent authorities of any evidence they may have concerning an imminent danger of the entry of: –a Union quarantine pest or a pest subject to measures adopted pursuant to Article 30(1) into the Union territory or into a part of the Union territory where it is not yet present, or –a protected zone quarantine pest into the respective protected zone (b) .
Article 14(1) (as read with Articles 16 and 33(1))	Requires a professional operator who suspects or becomes aware that: –a Union quarantine pest or a pest subject to measures adopted pursuant to Article 30(1) is present in plants, plant products or other objects which are under the operator’s control, –a protected zone quarantine pest is present in plants, plant products or other objects which are under the operator’s control in the respective protected zone, immediately to notify the competent authority and take precautionary measures to prevent the establishment and spread of the pest.
Article 14(3) (as read with Article 33(1))	Requires a professional operator: –to consult the competent authority where the professional operator has received an official

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- (a) Article 5(2), first subparagraph, of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC (“the EU Plant Health Regulation”) provides that the Commission shall, by means of an implementing act, establish a list of pests which fulfil the conditions listed in Article 3 of the EU Plant Health Regulation in respect of the Union territory (‘list of Union quarantine pests’). The relevant implementing act is Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019 (“Commission Implementing Regulation (EU) 2019/2072”).
- (b) Article 32(3) of the EU Plant Health Regulation provides that the Commission shall, by means of an implementing act, establish a list of protected zones and the respective protected zone quarantine pests. The relevant implementing act is Commission Implementing Regulation (EU) 2019/2072.

	confirmation concerning the presence of a Union quarantine pest in plants, plant products or other objects which are under the operator's control, and –where applicable, proceed with the actions required under Article 14(4) to (7).
Article 15(1) (as read with Articles 15(2), 16 and 33(1))	Requires a person who is not a professional operator immediately to notify the competent authority where the person becomes aware of, or has reason to suspect: –the presence of a Union quarantine pest, –the presence of a protected zone quarantine pest in the respective protected zone.
Article 32(2)	Prohibits the introduction of a protected zone quarantine pest into the respective protected zone, the movement of a protected zone quarantine pest within the respective protected zone or the holding, multiplication or the release of a protected zone quarantine pest in the respective protected zone.
Article 37(1) (as read with Article 39 and Article 17 of Regulation 2019/2072)	Prohibits the introduction into the Union territory by a professional operator of a Union regulated non-quarantine pest on plants for planting through which it is transmitted, or the movement of a Union regulated non-quarantine pest within the Union territory by a professional operator on plants for planting through which it is transmitted (a) .
Article 40(1) (as read with Articles 47 and 48(1))	Prohibits the introduction into the Union territory of certain plants, plant products or other objects if they originate from all or certain third countries or territories (b) .
Article 41(1) (as read with Articles 47 and 48(1))	Prohibits: –the introduction into the Union territory of certain plants, plant products or other objects from third countries unless the special requirements in respect of those plants, plant products or other objects are fulfilled (c) , –the movement within the Union territory of certain plants, plant products or other objects from third countries or within the Union territory unless the special requirements in respect of those plants, plant products or other

(a) Article 37(2) of the EU Plant Health Regulation provides that the Commission shall, by means of an implementing act, establish a list setting out the Union regulated non-quarantine pests and the specific plants for planting, as referred to in point (d) of Article 36 of the EU Plant Health Regulation. The relevant implementing act is Commission Implementing Regulation (EU) 2019/2072.

(b) Article 40(2), first subparagraph, of the EU Plant Health Regulation provides that the Commission shall, by means of implementing acts, adopt a list containing the plants, plant products and other objects referred to in Article 40(1) of the EU Plant Health Regulation which are prohibited from being introduced into the territory of the Union, together with third countries, groups of third countries or specific areas of third countries to which the prohibition applies. The relevant implementing act is Commission Implementing Regulation (EU) 2019/2072.

(c) Article 41(2), first subparagraph, of the EU Plant Health Regulation provides that the Commission shall, by means of implementing acts, adopt a list containing the plants, plant products and other objects and the corresponding special requirements as referred to in Article 41(1) of the EU Plant Health Regulation. That list shall, where applicable, include the third countries, groups of third countries or specific areas within third countries concerned. The relevant implementing act is Commission Implementing Regulation (EU) 2019/2072.

	objects are fulfilled.
Article 42(2) (as read with Articles 47 and 48(1))	Prohibits the introduction into the Union territory of high-risk plants, plant products or other objects from third countries(a).
Article 43(1)	Prohibits the introduction into the Union territory of wood packaging material, whether or not actually in use in the transport of objects of all kinds, unless it fulfils the specified requirements or is subject to the exemptions provided for in ISPM 15.
Article 45(1), third paragraph (as read with Article 55)	Requires postal services and professional operators involved in sales through distance contracts to make specified information available to their clients through the internet.
Article 53(1) (as read with Articles 57 and 58)	Prohibits: –the introduction of certain plants, plant products or other objects originating from third countries into certain protected zones, –the introduction of certain plants, plant products or other objects originating within the Union territory into certain protected zones(b).
Article 54(1) (as read with Articles 57 and 58)	Prohibits: –the introduction of certain plants, plant products or other objects into certain protected zones unless the special requirements in respect of those protected zones are fulfilled, –the movement of certain plants, plant products or other objects within certain protected zones unless the special requirements in respect of those protected zones are fulfilled(c).
Article 59	Requires vehicles, machinery or packaging material used for: –specified plants, plant products or other objects moving into or within the Union territory, or through the Union territory, to be free from Union quarantine pests and pests subject to measures adopted pursuant to Article 30(1), –specified plants, plant products or other objects moving into or within the protected zones, or through protected zones, to be free from the respective protected zone quarantine pests.
Article 62(1)	Requires a person responsible for a quarantine

- (a) The list of high risk plants, plant products and other objects to which the prohibition applies is set out in Annex 1 to Commission Implementing Regulation (EU) 2018/2019 of 18 December 2018 establishing a provisional list of high risk plants, plant products or other objects, within the meaning of Article 42 of Regulation (EU) 2016/2013 and a list of plants for which phytosanitary certificates are not required for introduction into the Union, within the meaning of Article 73 of that Regulation.
- (b) Article 53(2), first subparagraph, of the EU Plant Health Regulation provides that the Commission shall, by means of implementing acts, adopt a list containing the plants, plant products and other objects as referred to in Article 53(1) of the EU Plant Health Regulation which are prohibited from being introduced into certain protected zones. The relevant implementing act is Commission Implementing Regulation (EU) 2019/2072.
- (c) Article 54(2), first subparagraph, of the EU Plant Health Regulation provides that the Commission shall, by means of implementing acts, adopt a list containing the plants, plant products and other objects, their respective protected zones and the corresponding special requirements for protected zones. The relevant implementing act is Commission Implementing Regulation (EU) 2019/2072.

	station or confinement facility to monitor the station or facility and its immediate vicinity for the unintended presence of Union quarantine pests and pests subject to measures adopted pursuant to Article 30(1).
Article 62(2)	Requires a person responsible for a quarantine station or confinement facility to, when an unintended presence of a pest referred to in Article 62(1) is found or suspected, take appropriate action based on the contingency plan referred to in point (e) of Article 61(1) and to comply with the obligations of professional operators in Article 14.
Article 64(1) (as read with Article 64(2))	Prohibits the release of plants, plant products and other objects from quarantine stations or confinement facilities unless authorised by the competent authorities.
Article 66(1)	Requires certain professional operators to submit an application for registration to the competent authorities.
Article 66(5)	Requires registered operators, where relevant: <ul style="list-style-type: none"> –to submit an annual update concerning any changes in the data referred to in points (d) and (e) of Article 66(2) or in the statements referred to in points (b) and (c) of Article 66(2), –to submit an application to update the data referred to in point (a) of Article 66(2) no later than 30 days after the change in that data.
Article 69(1)	Requires a professional operator to whom plants, plant products or other objects are supplied that are subject to the specified requirements or conditions to keep a record allowing the operator to identify the professional operator who supplied each trade unit.
Article 69(2)	Requires a professional operator who is supplying plants, plant products or other objects that are subject to the specified requirements or conditions to keep a record allowing the operator to identify the professional operator to whom each trade unit was supplied.
Article 69(4)	Requires professional operators to keep the records required pursuant to Article 69(1) to (3) for at least three years.
Article 70(1)	Requires professional operators who are supplied with, or supply, the plants, plant products or other objects referred to in Article 69(1) and (2) to have in place traceability systems or procedures to allow identification of the movements of those plants, plant products and other objects within and between their own premises.
Articles 72(1) and 73	Prohibits the introduction into the Union territory of certain plants, plant products and other objects from third countries unless they are accompanied by a phytosanitary

	certificate (a) .
Article 74(1)	Prohibits the introduction of certain plants, plant products and other objects from certain third countries into certain protected zones unless accompanied by a phytosanitary certificate (b) .
Article 79(1) (as read with Articles 81, 82 and 83)	Prohibits the movement of certain plants, plant products and other objects within the Union territory without a plant passport (c) .
Article 80(1) (as read with Articles 81, 82 and 83)	Prohibits the introduction of certain plants, plant products and other objects into certain protected zones, or the movement of certain plants, plant products and other objects within certain protected zones, without a plant passport (d) .
Article 84(1)	Prohibits professional operators from issuing plant passports unless they are authorised and from issuing plant passports for plants, plant products or other objects for which they are not responsible.
Article 84(3)	Prohibits authorised professional operators from issuing plant passports except at specified premises, collective warehouses or dispatching centres, unless Article 94(1) applies.
Article 85 (as read with Article 87)	Prohibits authorised professional operators from issuing plant passports for the movement within the Union of plants, plant products or other objects unless the specified requirements are fulfilled in respect of those plants, plant products or other objects.
Article 86(1) (as read with Articles 86(2) and 87)	Prohibits authorised professional operators from issuing plant passports for plants, plant products or other objects to be introduced into, or moved within, a protected zone unless the specified requirements are fulfilled in respect of those plants, plant products or other objects.
Article 88	Requires professional operators to attach plant passports to the trade unit of the plants, plant products or other objects concerned, or where

- (a) Article 72(1), first subparagraph, of the EU Plant Health Regulation provides that the Commission shall, by means of an implementing act, establish a list of the plants, plant products and other objects, and their respective third countries of origin or dispatch, for which a phytosanitary certificate is required for introduction into the Union territory. Article 73 of the EU Plant Health Regulation provides that the Commission shall, by means of an implementing act, provide that for plants, other than plants included in the list referred to in Article 72(1) of the EU Plant Health Regulation, a phytosanitary certificate is required for introduction into the Union territory, and that a phytosanitary certificate is not required for those plants where an assessment, based on evidence about pest risks and experience with trade, demonstrates that such a certificate is not necessary. The relevant implementing act is Commission Implementing Regulation (EU) 2019/2072.
- (b) Article 74(1), second subparagraph, of the EU Plant Health Regulation provides that the Commission shall, by means of implementing acts, establish a list of those plants, plant products and other objects, and the respective third countries of origin or dispatch, referred to in the first subparagraph of Article 74(1) of the EU Plant Health Regulation. The relevant implementing act is Commission Implementing Regulation (EU) 2019/2072.
- (c) Article 79(1), first subparagraph, of the EU Plant Health Regulation provides that the Commission shall, by means of implementing acts, establish a list of those plants, plant products and other objects, for which a plant passport is required for their movement within the Union territory. The relevant implementing act is Commission Implementing Regulation (EU) 2019/2072.
- (d) Article 80(1), second subparagraph, of the EU Plant Health Regulation provides that the Commission shall, by means of implementing acts establish a list of those plants, plant products and other objects for which a plant passport is required for their introduction into, and movement within, certain protected zones. The relevant implementing act is Commission Implementing Regulation (EU) 2019/2072.

	the plants, plant products or other objects are moved in a package, bundle or container, to that package, bundle or container.
Article 90(1)	Requires an authorised operator to: –identify and monitor the points in its production process and certain other points concerning the movement of plants, plant products and other objects where the authorised operator intends to issue a plant passport in respect of those plants, plant products and other objects, and –keep records concerning the identification and monitoring of those points for at least three years.
Article 90(2)	Requires authorised operators to ensure that appropriate training is given to its personnel involved in the examinations referred to in Article 87.
Article 93(1)	Prohibits authorised operators from issuing replacement plant passports unless certain conditions are fulfilled.
Article 93(5)	Requires professional operators to retain replaced plant passports or their contents for at least three years.
Article 96(1)	Prohibits the marking of wood packaging material, wood or other objects in the Union territory by any person who is not authorised in accordance with Article 98 or in any manner other than the manner required.
Article 97(1)	Prohibits the repairing of wood packaging material by any person who is not authorised in accordance with Article 98 or in any manner other than the manner required.

PART 2

The Official Controls Regulation

<i>Provision of the Official Controls Regulation</i>	<i>Subject matter</i>
Article 47(5) (as read with the provisions of a delegated act that establishes certain categories of animals and goods exempted from Article 47, made by the Commission under Article 48)	Requires the operator responsible for a relevant consignment entering the Union to ensure that it is presented for official controls at the border control post of first arrival into the Union.
Article 50(1)	Requires the operator of a relevant consignment to which Article 47(1) applies to present the original official certificates or documents which are required to accompany the consignment to the competent authorities of the border control post.
Article 50(3)	Prohibits the operator of a relevant consignment from splitting the consignment until official controls have been performed and the Common Health Entry Document has been finalised.
Article 56(1)	Requires the operator of a relevant consignment to complete the relevant part of the Common Health Entry Document.
Article 56(4) (as read with Article 1(1) of Commission Implementing Regulation (EU) 2019/1013 on the prior notification of consignments of certain categories of animals and goods entering the Union ^(a) and regulation 7 of these Regulations	Requires the operator of a relevant consignment to give prior notification to the competent authorities of the border control post of arrival of the consignment before the physical arrival of the consignment in the Union.

PART 3

Other EU legislation

<i>Provision of EU legislation</i>	<i>Subject matter</i>
Commission Delegated Regulation (EU) 2019/1602 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council concerning the Common Health Entry Document accompanying consignments of animals and goods to their destination^(b)	
Article 3 (as read with Articles 4(a), 5(1)(b) and (d), 5(2)(a) and (c) and 6(a))	Requires the operator responsible for a consignment to ensure that a Common Health Entry Document accompanies the consignment, irrespective of whether or not it is split, until it is released for free circulation in accordance with Article 57(2)(b) of the Official Controls Regulation.

^(a) OJ L 165, 21.6.2019, p.8.

^(b) OJ L 250, 30.9.2019, p.6.

SCHEDULE 4

Regulation 37(1)(h)

Offences: EU decisions relating to plant health

<i>EU instrument</i>	<i>Provision of EU instrument</i>
Commission Decision 98/109/EC	Article 1 (requirements in relation to the introduction into the Union territory of cut flowers of <i>Orchidaceae</i> originating in Thailand)
Commission Decision 2002/757/EC	Article 3(1) and (2) (requirements in relation to the introduction into the Union territory of susceptible plants and susceptible wood originating in the USA)
	Article 3(4) (requirements in relation to the movement within the Union territory of certain plants intended for planting originating in third countries, other than the USA)
	Article 4 (prohibition on the introduction into the Union territory of susceptible bark originating in the USA)
	Article 5 (requirements in relation to the movement within the Union territory of certain plants intended for planting originating in the Union)
Commission Decision 2004/200/EC	Article 1 (prohibition on the movement within the Union territory of seeds of <i>Solanum lycopersicum</i> L. contaminated by Pepino mosaic virus) insofar as it relates to the movement of seeds of <i>Solanum lycopersicum</i> L. that were produced before 14th December 2019 and are moved within the Union territory at any time before 14th December 2020
	Article 3(1) (requirements in relation to the movement of seeds of <i>Solanum lycopersicum</i> originating in the Union) insofar as it relates to the movement of seeds of <i>Solanum lycopersicum</i> L. that were produced before 14th December 2019 and are moved within the Union territory at any time before 14th December 2020
Commission Decision 2011/787/EU	Article 1(1) (requirements on the introduction of tubers of <i>Solanum tuberosum</i> L. from Egypt)
Commission Implementing Decision 2012/138/EU	Article 2 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries, other than China)
	Article 3(1) and (2) (requirements in relation to the introduction into the Union territory of specified plants originating in China)
	Article 4 (requirements in relation to the movement within the Union territory of specified plants originating in, or introduced into, demarcated areas or specified plants introduced into the Union territory in accordance with Article 2 or 3)
Commission Implementing Decision 2012/270/EU	Article 1 (prohibition on the introduction of the specified organisms into the Union territory and the spread of the specified organisms within the Union territory)
	Article 2(1) (requirements in relation to the introduction into the Union territory of potato tubers originating in third countries where one or more of the specified organisms are known to be present)
	Article 3 (requirements in relation to the movement within the Union territory of potato tubers originating in demarcated areas or potato tubers introduced into the Union territory from third countries where one or more of the specified organisms are known to be present)
Commission Implementing Decision	Article 10(1) and (2) (requirements in relation to the movement within the Union territory of susceptible plants, susceptible wood or

2012/535/EU	susceptible bark)
Commission Implementing Decision 2012/697/EU	Article 2 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries)
	Article 3 (requirements in relation to the movement within the Union territory of specified plants for planting originating in demarcated areas)
Commission Implementing Decision (EU) 2015/789	Article 9 (requirements in relation to the movement within the Union territory of specified plants, other than plants grown for the entire production cycle <i>in vitro</i> or plants belonging to varieties of specified plants listed in Annex III)
	Article 9a (requirements in relation to the movement within the Union territory of specified plants which have been grown for the entire production cycle <i>in vitro</i> and for at least part of their life in demarcated areas)
	Article 15 (prohibition of the introduction of plants for planting, other than seeds, of <i>Coffea</i> originating in Costa Rica or Honduras)
	Article 16 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is not present)
	Article 17(1) (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is known to be present)
Commission Implementing Decision (EU) 2015/893	Article 2(a) (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is known to be present)
	Article 3(a) (requirements in relation to the introduction into the Union territory of specified wood originating in third countries where the specified organism is known to be present)
	Article 4 (requirements in relation to the movement within the Union territory of specified plants originating in, or introduced into, demarcated areas or specified plants introduced into the Union territory from third countries in accordance with Article 2)
	Article 5 (requirements in relation to the movement within the Union territory of specified wood originating in demarcated areas, specified wood retaining all or part of its round surface which has been introduced into demarcated areas or specified wood packaging material originating in demarcated areas)
Commission Implementing Decision (EU) 2016/715	Article 5 (requirements in relation to the introduction into the Union territory of specified fruits originating in South Africa or Uruguay)
	Article 5a (requirements in relation to introduction into the Union territory of specified fruits originating in Argentina and Brazil)
Commission Implementing Decision (EU) 2017/198	Article 1 (prohibition on the introduction of the specified organism into the Union territory and its spread within the Union territory)
	Article 2 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries)
	Article 3 (requirements in relation to the movement within the Union territory of specified plants originating in the Union or specified plants introduced into the Union territory from third countries in accordance with Article 2)
Commission Implementing Decision (EU) 2018/638	Article 3(a) and (b) (requirements in relation to introduction into the Union territory of specified plants originating in Africa or the Americas)
Commission Implementing Decision (EU) 2018/1503	Article 7(1), (6) and (7) (requirements in relation to the movement within the Union territory of specified plants originating in demarcated areas, specified plants introduced into demarcated areas or specified

	plants introduced into the Union territory from third countries where the specified organism is known to be present in accordance with Article 11)
	Article 8 (requirements in relation to the movement within the Union territory of specified wood originating in demarcated areas or specified wood retaining all or part of its surface introduced into demarcated areas)
	Article 9 (requirements in relation to movement within the Union territory of specified wood packaging material originating in demarcated areas)
	Article 11 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is known to be present)
	Article 12 (requirements in relation to the introduction into the Union territory of specified wood originating in third countries where the specified organism is known to be present)
Commission Implementing Decision (EU) 2019/1615	Article 2 (prohibition on the introduction of the specified organism into the Union territory and on its spread within the Union territory)
	Article 5 (requirements in relation to the movement within the Union territory of specified plants intended for planting originating in the Union territory)
	Article 6 (requirements in relation to introduction into the Union territory of specified plants intended for planting originating in third countries)
Commission Implementing Decision (EU) 2019/1739	Article 2 (prohibition on the introduction of the specified organism into the Union territory and on its spread within the Union territory)
	Article 5 (requirements in relation to the introduction into the Union territory of specified plants originating in Canada, India or the USA)
Commission Implementing Decision (EU) 2019/2032	Article 2 (requirements in relation to the detection or suspected presence and notification of the specified organism)
	Article 6 (requirements in relation to the movement within the Union territory of specified plants)
	Article 7 (requirements in relation to the movement within the Union territory of certain wood and isolated bark originating in infested zones or demarcated areas)
	Article 8 (requirements in relation to the movement within the Union territory of wood packaging material originating in infested zones or demarcated areas)
	Article 9 (requirements in relation to the introduction into the Union territory of specified plants originating in non-European third countries)
	Article 10 (requirements in relation to the introduction into the Union territory of certain wood and isolated bark originating from non-European third countries)

SCHEDULE 5

Regulation 48

Amendments to secondary legislation

PART 1

The Marketing of Vegetable Plant Material Regulations 1995

1.—(1) The Marketing of Vegetable Plant Material Regulations 1995^(a) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1), after the definition of “Directive 2008/72/EC” insert—

““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC^(b)”.

(3) In regulation 8 (information to accompany plant material)—

- (a) in paragraph (2), for “Council Directive 2000/29/EC” substitute “the EU Plant Health Regulation”,
- (b) omit paragraph (5).

PART 2

The Marketing of Ornamental Plant Propagating Material Regulations 1999

2.—(1) The Marketing of Ornamental Plant Propagating Materials Regulations 1999^(c) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1)—

- (a) omit the definition of “Directive 2000/29/EC”,
- (b) before the definition of “inspector”, insert—

““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC”.

(c) after the definition of “the Minister”, insert—

““the Plant Health Official Controls Regulations” means the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019^(d)”.

(3) In regulation 6A (further provisions relating to propagating material of *Palmae*), in paragraph (4), in the definition of “responsible official body”, for the words from “either the” to the end substitute “the Scottish Ministers”.

(a) S.I. 1995/2652; relevant amending instruments are S.S.I. 2007/133, S.S.I. 2014/111 and S.S.I. 2018/391.

(b) OJ L 317, 23.11.2016, p.4, as last amended by Regulation (EU) 2017/625 (OJ L 95, 7.4.2017, p.1) with effect from 14 December 2019.

(c) S.I. 1999/1801; relevant amending instrument is S.S.I. 2018/284.

(d) S.S.I. 2019/[].

- (4) In regulation 7 (registration), for paragraph (4) substitute—
- “(4) Registration of a supplier on the register of professional operators for the purposes of the EU Plant Health Regulation is deemed to constitute registration for the purposes of paragraph (1).”.
- (5) In regulation 8 (measures to be taken by suppliers), in paragraph (3)—
- (a) for the words from “plant pest” to “Order 2005” substitute “controlled plant pest as defined in regulation 2(1) of the Plant Health Official Controls Regulations”,
- (b) for the words from “article 42” to “plant pests)” substitute “the EU Plant Health Regulation”.
- (6) In regulation 9 (information on propagating material), in paragraph (2), for “Directive 2000/29/EC” substitute “the EU Plant Health Regulation”.
- (7) In regulation 12 (propagating material produced in third countries), in paragraph (3), for the words from “article 9(1)” to the end substitute “the EU Plant Health Regulation”.

PART 3

The Forest Reproductive Material (Great Britain) Regulations 2002

3.—(1) The Forest Reproductive Material (Great Britain) Regulations 2002(a) are amended as follows.

- (2) In regulation 2 (interpretation), in paragraph (2)—
- (a) at the appropriate place insert—
- ““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC;”,
- (b) in the definition of “plant passport”, for “Plant Health (Forestry) Order 2005” substitute “EU Plant Health Regulation”.

PART 4

The Potatoes Originating in Egypt (Scotland) Regulations 2004

4.—(1) The Potatoes Originating in Egypt (Scotland) Regulations 2004(b) are amended as follows.

- (2) In regulation 2 (interpretation)—
- (a) in paragraph (1)—
- (i) after the definition of “the Decision” insert—
- ““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC;”,
- (ii) in the definition of “inspector”, for the words from “an inspector” to the end substitute “a plant health inspector for the purposes of the Plant Health Official Controls Regulations”,

(a) S.I. 2002/3026; relevant amending instrument is S.I. 2014/1833.

(b) S.S.I. 2004/111; relevant amending instruments are S.S.I. 2007/94 and S.S.I. 2012/37.

- (iii) omit the definition of “the Order”,
 - (iv) in the definition of “phytosanitary certificate”, for the words from “certificate” in the second place it occurs to the end substitute “phytosanitary certificate for the introduction of plants, plant products and other objects into the Union territory within the meaning of article 71 of the EU Plant Health Regulation”,
 - (v) after the definition of “phytosanitary certificate” insert—
 - ““the Plant Health Official Controls Regulations” means the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019;”,
 - (b) in paragraph (2), for the words from “article 32(1)” to “the Order” substitute “regulation 15 (notices to prevent the establishment or spread of plant pests) of the Plant Health Official Controls Regulations”,
 - (c) in paragraph (3), for the words from “the Order” to the end substitute “the Plant Health Official Controls Regulations are to be interpreted in accordance with regulation 2 (interpretation) of those Regulations.”.
- (3) In regulation 3 (imports of potatoes originating in Egypt), in paragraph (3) for the words from “imposed by” to “occur” substitute “that tubers of *Solanum tuberosum* L., other than those for planting, be accompanied by an official statement that the tubers originate in areas in which *Ralstonia solanacearum* (Smith) Yabuuchi *et al.* are known not to occur, as imposed by item 21 of Annex 7 to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019(a),”.
- (4) In regulation 5 (powers of an inspector)—
- (a) in paragraph (1), for the words from “the Order” to the end substitute “the Plant Health Official Controls Regulations exercise the powers conferred by those Regulations”,
 - (b) in paragraph (2)—
 - (i) omit sub-paragraph (a),
 - (ii) in sub-paragraph (b)—
 - (aa) for the words from “article 32(4)” to “the Order” in the second place they occur substitute “regulation 15 (notices to prevent the establishment or spread of plant pests) of the Plant Health Official Controls Regulations”,
 - (bb) for the words from “relevant material” to the end substitute “, within the meaning of regulation 14 of those Regulations, prohibited material which an inspector suspects to be present or likely to be present, or which the inspector has become aware is present, on any premises for the purposes of that regulation.”,
 - (c) in paragraph (3)—
 - (i) for the words from “article 32(4)” to “the Order” in the second place they occur substitute “regulation 15 of the Plant Health Official Controls Regulations”,
 - (ii) for the words from “relevant material” to the end substitute “, within the meaning of regulation 14 of those Regulations, prohibited material which an inspector suspects to be present or likely to be present, or which the inspector has become aware is present, on any premises for the purposes of that regulation.”,
 - (d) in paragraph (4)—
 - (i) for the words from “article 32(1)” in the first place they occur to “the Order” in the second place they occur substitute “regulation 15 of the Plant Health Official Controls Regulations has effect as if served under that regulation”,

(a) OJ L 319, 10.12.2019, p.1.

- (ii) for the words from “articles 34(3)” to “the Order” in the third place they occur substitute “regulations 31 (information notices), 32 (failure to comply with a notice), 35(2)(c), (4) and (5) (miscellaneous provisions as to notices), 36 (service of notices), 38 (failure to comply with requirements of notices), 39 (defence: reasonable excuse for failure to comply with requirements of notices etc.), 42 (obstruction etc.), 43 (defence: reasonable excuse for obstruction etc.), 46 (offences by bodies corporate, etc.) and 47 (penalties) of the Plant Health Official Controls Regulations”,
- (e) in paragraph (5), for the words from “article 31” to the end substitute “regulation 29 (powers of entry) of the Plant Health Official Controls Regulations, as if enforcing those Regulations”,
- (f) in paragraph (6)—
 - (i) for the words from “article 31” to “the Order” in the first place they occur substitute “regulation 29 (powers of entry) of the Plant Health Official Controls Regulations”,
 - (ii) for the words from “the Order” in the second place they occur to the end substitute “the Plant Health Official Controls Regulations, and regulations 38, 42, 43, 46 and 47 (penalties) of those Regulations apply accordingly”.

PART 5

The Plant Health (Potatoes) (Scotland) Order 2006

5. In the Plant Health (Potatoes) (Scotland) Order 2006(a), in article 2 (interpretation), in paragraph (1), in the definition of “inspector”, for the words from “a person” to the end substitute “a plant health inspector for the purposes of the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019”.

PART 6

The Plant Health (Fees) (Scotland) Regulations 2008

- 6.—**(1) The Plant Health (Fees) (Scotland) Regulations 2008(b) are amended as follows.
- (2) In regulation 2 (interpretation)—
- (a) omit the definition of “authority”,
 - (b) before the definition of “licence” insert—
 - ““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC(c);”,
 - (c) in the definition of “licence”, for the words from “a licence” to the end substitute—
 - “(a) a licence that was granted by the Scottish Ministers under article 40 or, as the case may be, article 41 of the Plant Health (Scotland) Order 2005(d); or
 - (b) an authorisation described in regulations 20(1)(a) and (b) and 21(2) of the Plant Health Official Controls Regulations;”,
 - (d) omit the definition of “the 2005 Order”,

(a) S.S.I. 2006/319, to which there are amendments not relevant to these Regulations.
 (b) S.S.I. 2008/153, as amended by S.S.I. 2010/207 and S.S.I. 2019/124.
 (c) O.J. L 317, 23.11.2016, p.4, as last amended by Regulation (EU) 2017/625 (OJ L 95, 7.4.2017, p.1) with effect from 14 December 2019.
 (d) S.S.I. 2005/613, as relevantly amended by S.S.I. 2008/300, S.S.I. 2011/1043, S.S.I. 2012/266 and S.S.I. 2013/187. S.S.I. 2005/613 is revoked by these Regulations, but transitional provisions at regulations 50(1) and 51(1) of these Regulations that licences granted under articles 40 and 41 of S.S.I. 2005/613 continue to have effect temporarily.

- (e) omit the definition of “plant passport”,
- (f) before the definition of “premises” insert—
““the Plant Health Official Controls Regulations” means the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019(a);”.

(3) In regulation 5A (fees for potato cyst nematode testing), for the words from “article 39(8)” to “2005 Order” substitute “paragraph 4 of schedule 2 (specific measures relating certain solanaceous species) of the Plant Health Official Controls Regulations”.

(4) In schedule 1 (fees for inspections for plant passporting purposes), in column 1 of the table for “authority to issue plant passports” substitute “authorisation to issue plant passports under Article 89 of the EU Plant Health Regulation”.

PART 7

The Waste Management Licensing (Scotland) Regulations 2011

7.—(1) The Waste Management Licensing (Scotland) Regulations 2011(b) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1), after the definition of “operational land” insert—

““the Plant Health Official Controls Regulations” means the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019;”.

(3) In schedule 1 (activities exempt from waste management licensing)—

(a) in paragraph 30, in sub-paragraph (3), for the words from “article 32” to the end substitute “regulation 10 (official measures in relation to non-compliant consignments or consignments which pose a risk to plant health) or 15 (notices to prevent the establishment or spread of plant pests) of the Plant Health Official Controls Regulations”,

(b) in paragraph 46, in sub-paragraph (1)—

(i) in head (a), for the words from “article 32” to “Order 2005” substitute “regulation 10 (official measures in relation to non-compliant consignments or consignments which pose a risk to plant health) or 15 (notices to prevent the establishment or spread of plant pests) of the Plant Health Official Controls Regulations”,

(ii) in head (b), for the words from “article 31” to “Order 2005” substitute “regulation 10 (official measures in relation to non-compliant consignments or consignments which pose a risk to plant health) or 15 (notices to prevent the establishment or spread of plant pests) of the Plant Health Official Controls Regulations”.

PART 8

The Plant Health (Import Inspection Fees) (Scotland) Regulations 2014

8.—(1) The Plant Health (Import Inspection Fees) (Scotland) Regulations 2014(c) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1)—

(a) after the definition of “the Directive” insert—

““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the

(a) S.S.I. 2019/[].

(b) S.S.I. 2011/228, to which there are amendments not relevant to these Regulations.

(c) S.S.I. 2014/338, to which there are amendments not relevant to these Regulations.

European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC;”,

(b) omit the definition “intended for planting”,

(c) after the definition of “normal working hours” insert—

““Official Controls Regulation” means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC, insofar as it applies to rules referred to Article 1(2)(g) of that Regulation(a);”,

(d) in the definition of “plants”, for the words from “Article 2(1)(a)” to the end substitute “Article 2 (definitions), point (1) of the EU Plant Health Regulation”,

(e) in the definition of “plant products”, for the words from “Article 2(1)(b)” to the end substitute “Article 2 (definitions), point (2), first sub-paragraph of the EU Plant Health Regulation”.

(3) In regulation 3 (application of the import inspection fee), in paragraph (2)—

(a) in sub-paragraph (a), in head (i), for the words from “in Annex” to the end substitute “in Part A of Annex 11 or in Annex 12 to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019(b), as amended from time to time;”,

(b) for sub-paragraph (b) substitute—

“(b) is subject to—

(i) official controls at a border control post in Scotland pursuant to Article 47(1) of the Official Controls Regulation; or

(ii) any agreement made under the provisions of any delegated act that establishes the cases where, and the conditions under which, identity checks and physical checks of transhipped consignments and of animals arriving by air or sea and staying on the same means of transport for onward travel may be performed at a border control post other than the one of first arrival into the Union, adopted by the Commission under Article 51(1) (specific rules for official controls at border inspection posts) of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and

(a) OJ L 95, 7.4.2017, p.1, as last amended by Commission Delegated Regulation (EU) 2019/478 (OJ L 82, 25.3.2019, p.4) with effect from 14 December 2019.

(b) OJ L 319, 10.12.2019, p.1.

repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC.”.

- (4) In regulation 5 (additional fees in respect of potatoes originating in Egypt and Lebanon)—
- (a) in paragraph (1), omit “or (3)”,
 - (b) omit paragraph (3).

PART 9

The Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015

9.—(1) The Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015(a) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) at the appropriate place insert—

““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC;

“the Official Controls Regulation” means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC, insofar as it applies to rules referred to Article 1(2)(g) of that Regulation;”;

“WPM authorisation” means an authorisation referred to in Article 98(1) of the EU Plant Health Regulation;”;

(ii) in the definition of “approved place of inspection” for “article 3 of the Order” substitute “regulation 13 of Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019(b)”,

(iii) for the definition of “controlled consignment” substitute—

““controlled consignment” means a consignment which—

(a) is introduced into Scotland from a third country; and

(a) S.I. 2015/350, to which there are amendments not relevant to these Regulations. S.I. 2015/350 is also prospectively amended by S.S.I. 2019/130, from “exit day” within the meaning of section 20 of the European Union (Withdrawal) Act 2018 (c.16).

(b) S.S.I. 2019/[]

- (b) consists of, or includes isolated bark or isolated wood of a type listed in Part A of Annex 11 or in Annex 12 to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019(a), as amended from time to time, other than wood packaging material which is actually in use in the transport of objects of all kinds;”,
 - (iv) omit the definitions of “the Directive”, “documentary check” and “identity check”,
 - (v) for the definition of “licence” substitute—
 - ““licence” means—
 - (a) a licence which was granted by the Forestry Commissioners or by the Scottish Ministers under article 38 or 39 of the Plant Health (Forestry) Order 2005(b); or
 - (b) an authorisation described in regulation 20(1)(a) or (b) or 21 of the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019;”,
 - (vi) omit the definitions of “the Order” and “plant health check”,
 - (vii) in the definition of “plant passport authority”—
 - (aa) for “authority”, in the second place where it occurs substitute “authorisation”,
 - (bb) at the end omit “granted by the Forestry Commissioners or the Scottish Ministers under article 28 of the Order”,
 - (viii) in the definition of “remedial notice”, for “served under article 31(1) or (4) or 33(3) of the Order” substitute “served under regulations 8 or 15 of the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019”,
 - (ix) in the definition of “remedial work”, for “article 32(1) of the Order” substitute regulation 16 of the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019”,
 - (b) in paragraph (2), for “Order”, in both places where it occurs, substitute “EU Plant Health Regulation or the Official Controls Regulation”.
- (3) In regulation 3 (fees)—
- (a) in paragraph (2), after “activities” insert “carried out by, or on behalf of Scottish Ministers”,
 - (b) after paragraph (5) insert—
 - “(5A) The fee payable in connection with an application to the Scottish Ministers for a phytosanitary certificate or phytosanitary certificate for re-export is the fee specified in schedule 5A.
 - (5B) The fee payable in connection with an application to the Scottish Ministers for an authorisation referred to in Article 98(1) of the EU Plant Health Regulation is the fee specified in schedule 5B.”,
 - (c) in paragraph (6), for “article 32(1) of the Order” substitute “regulation 16 of the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019”.

(a) OJ L 319, 10.12.2019, p. 1.

(b) S.I. 2005/2517, as last relevantly amended by S.I. 2013/755. S.I. 2005/2517 is revoked by these Regulations, but transitional provisions at regulations 50(1) and 51(1) of these Regulations stipulate that licences granted under articles 38 and 39 of S.I. 2005/2517 continue to have effect temporarily.

(4) After schedule 5 (fees for the carrying out or monitoring of remedial work) insert—

“SCHEDULE 5A

Regulation 3(5A)

Fees in connection with an application for a phytosanitary certificate or phytosanitary certificate for re-export

<i>Service</i>	<i>Fee</i>
The consideration of an application, including the issue, where appropriate, of a phytosanitary certificate or a phytosanitary certificate for re-export	£15.00
The examination or testing of plants, plant products or other objects and associated activities (including travelling and office time):	
(a) up to and including the first hour;	£27.00
(b) thereafter, for each additional 15 minutes or part thereof	£7.50.

SCHEDULE 5B

Regulation 3(5B)

Fees in connection with an application for a WPM authorisation

<i>Type of application</i>	<i>Fee</i>
Application for a WPM authorisation, other than a renewal of an existing WPM authorisation	£400.00
Application for a renewal of an existing WPM authorisation	£120.00
Application for a re-assessment for the purposes a WPM authorisation	£120.00”.

PART 10

The Seed Potatoes (Scotland) Regulations 2015

10.—(1) The Seed Potatoes (Scotland) Regulations 2015(a) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1)—

(a) after the definition of “Directive 2001/18/EC” insert—

““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC;”

(a) S.S.I. 2015/395, to which there are amendments not relevant to these Regulations.

- (b) after the definition of “package” insert—
- “the Plant Health Official Controls Regulations” means the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019(a);”.
- (3) In regulation 10 (labelling of seed potatoes), for paragraph (8), substitute—
- “(8) No person may, in marketing or preparing for marketing any seed potatoes, wilfully reproduce, remove, alter, deface, conceal or misuse in any way, any official label, or official document which has been attached to or contained within the package or container of such seed potatoes in accordance with this regulation, unless such action is in accordance with the requirements of—
- (a) the Act;
 - (b) these Regulations;
 - (c) the EU Plant Health Regulation; or
 - (d) an Order made under the Plant Health Act 1967.”.
- (4) In regulation 22 (consequential amendments), omit paragraph (2).
- (5) In schedule 1 (conditions for certification and grading of Scottish seed potatoes)—
- (a) in paragraph 4, for the words from “paragraph 1” to the end substitute “paragraph 8 in Part 3 (measures for the control of Potato Wart Disease) of schedule 2 (specific measures relating to certain solanaceous species) of the Plant Health Official Controls Regulations”,
 - (b) in paragraph 5, in sub-paragraph (1), in head (d), for the words from “article 39(3)” to “Order 2005” substitute “paragraph 2(3) (general restrictions on the planting of potatoes) in Part 2 (general provisions relating to the planting of certain solanaceous species) of schedule 2 (specific measures relating to certain solanaceous species) of the Plant Health Official Controls Regulations”,
 - (c) in paragraph 7, in sub-paragraph (b), for the words from “paragraph 7” to the end substitute “paragraph 18 (notice that sampling unit is infested with Potato Cyst Nematode) in Part 4 (measures for the control of European populations of Potato Cyst Nematode) of schedule 2 (specific measures relating to certain solanaceous species) of the Plant Health Official Controls Regulations”,
 - (d) in paragraph 11, in sub-paragraph (b), for the words from “paragraph 7” to the end substitute “paragraph 18 (notice that sampling unit is infested with Potato Cyst Nematode) in Part 4 (measures for the control of European populations of Potato Cyst Nematode) of schedule 2 (specific measures relating to certain solanaceous species) of the Plant Health Official Controls Regulations”,
 - (e) in paragraph 14, in sub-paragraph (b), for the words from “paragraph 7” to the end substitute “paragraph 18 (notice that sampling unit is infested with Potato Cyst Nematode) in Part 4 (measures for the control of European populations of Potato Cyst Nematode) of schedule 2 (specific measures relating to certain solanaceous species) of the Plant Health Official Controls Regulations”.

PART 11

The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017

11.—(1) The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017(b) are amended as follows.

(a) S.S.I. 2019/[].

(b) S.S.I. 2017/177, to which there are amendments not relevant to these Regulations.

(2) In regulation 2 (interpretation), in paragraph (1), after the definition of “Directive 2001/18/EC” insert—

““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC;” .

(3) In regulation 8 (labelling, sealing and packaging), omit paragraph (5).

(4) In regulation 10 (registration of suppliers), in paragraph (6), for the words from “plant trader” to “2005” substitute “professional operator for the purposes of the EU Plant Health Regulation”.

PART 12

The Plant Health (Export Certification) (Scotland) Order 2018

12.—(1) The Plant Health (Export Certification) (Scotland) Order 2018^(a) is amended as follows.

(2) In article 2 (interpretation)—

(a) after the definition of “consignment” insert—

““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC^(b);

(b) in the definition of “inspector”, for the words from “any person” to the end substitute “a plant health inspector for the purposes of the Plant Health Official Controls Regulations;”,

(c) in the definition of “phytosanitary certificate”, for the words from “articles 7” to the end substitute “Article 100 of the EU Plant Health Regulation;”,

(d) in the definition of “phytosanitary certificate for re-export”, for the words from “articles 7” to the end substitute “Article 101 of the EU Plant Health Regulation;”,

(e) after the definition of “phytosanitary certificate for re-export” insert—

““the Plant Health Official Controls Regulations” means the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019;”,

(f) omit the definition of “principal plant health Order”.

(3) Omit article 3.

(4) Omit article 5.

(5) Omit article 6.

^(a) S.S.I. 2018/132.

^(b) O.J. L 317, 23.11.2016, p.4, as last amended by Regulation (EU) 2017/625 (OJ L 95, 7.4.2017, p.1) with effect from 14 December 2019.

SCHEDULE 6

Regulation 49

Revocation of instruments

<i>Column 1</i> <i>Instrument revoked</i>	<i>Column 2</i> <i>Reference</i>	<i>Column 3</i> <i>Extent of revocation</i>
The Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004	S.I. 2004/1684	The whole instrument
The Plant Health (Scotland) Order 2005	S.S.I. 2005/613	The whole instrument
The Plant Health (Forestry) Order 2005	S.I. 2005/2517	The whole instrument
The Plant Health (Scotland) Amendment Order 2006	S.S.I. 2006/474	The whole instrument
The Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006	S.I. 2006/2695	The whole instrument
The Plant Health (Forestry) (Amendment) Order 2006	S.I. 2006/2696	The whole instrument
The Plant Health (Scotland) Amendment Order 2007	S.S.I. 2007/415	The whole instrument
The Plant Health (Scotland) Amendment (No. 2) Order 2007	S.S.I. 2007/498	The whole instrument
The Plant Health (Scotland) Amendment Order 2008	S.S.I. 2008/300	The whole instrument
The Plant Health (Scotland) Amendment (No. 2) Order 2008	S.S.I. 2008/350	The whole instrument
The Plant Health (Forestry) (Amendment) Order 2008	S.I. 2008/644	The whole instrument
The Plant Health (Scotland) Amendment Order 2009	S.S.I. 2009/153	The whole instrument
The Plant Health (Forestry) (Amendment) Order 2009	S.I. 2009/594	The whole instrument
The Plant Health (Forestry) (Amendment) (No. 2) Order 2009	S.I. 2009/3020	The whole instrument
The Plant Health (Scotland) Amendment Order 2010	S.S.I. 2010/206	The whole instrument
The Plant Health (Scotland) Amendment (No. 2) Order 2010	S.S.I. 2010/342	The whole instrument
The Plant Health (Scotland) Amendment Order 2012	S.S.I. 2012/266	The whole instrument
The Plant Health (Scotland) Amendment (No. 2) Order 2012	S.S.I. 2012/326	The whole instrument
The Plant Health (Forestry) (Amendment) Order 2012	S.I. 2012/2707	The whole instrument
The Plant Health (Scotland) Amendment Order 2013	S.S.I. 2013/5	The whole instrument
The Plant Health (Scotland) Amendment (No. 2) Order 2013	S.S.I. 2013/187	The whole instrument
The Plant Health (Scotland) Amendment (No. 3) Order 2013	S.S.I. 2013/366	The whole instrument
The Plant Health (Forestry) (Amendment) (England and Scotland) Order 2013	S.I. 2013/2691	The whole instrument
The Plant Health (Scotland) Amendment Order 2014	S.S.I. 2014/140	The whole instrument
The Plant Health (Forestry) (Amendment) (England and Scotland) Order 2014	S.I. 2014/2420	The whole instrument
The Plant Health (Scotland) Amendment Order 2015	S.S.I. 2015/10	The whole instrument
The Plant Health (Scotland) Amendment Order 2016	S.S.I. 2016/83	The whole instrument
The Plant Health (Forestry) (Amendment) (England and Scotland) Order 2016	S.I. 2016/1167	The whole instrument
The Plant Health (Forestry) (Amendment) (England	S.I. 2017/1178	The whole instrument

and Scotland) Order 2017		
The Plant Health (Scotland) Amendment Order 2018	S.S.I. 2018/112	The whole instrument
The Plant Health (Scotland) Amendment (No. 2) Order 2018	S.S.I. 2018/283	The whole instrument
The Plant Health (Forestry) (Amendment) (England and Scotland) Order 2018	S.I. 2018/1048	The whole instrument
The Plant Health (Miscellaneous Amendments) (Scotland) Order 2019	S.S.I. 2019/242	The whole instrument
The Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2019	S.S.I. 2019/124	Regulations 2 to 15
The Plant Health (Scotland) Amendment Order 2019	S.S.I. 2019/290	The whole instrument

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect in particular to—

- (a) Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC,
- (b) Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC, in so far as it applies to the rules referred to in Article 1(2)(g) of that Regulation.

Part 1 contains introductory and interpretation provisions.

Part 2 makes provision in connection with the designation of the Scottish Ministers as the competent authority responsible for the organisation and performance of official controls and other official activities in Scotland for plant health purposes.

Part 3 makes provision in connection with official controls on imports of plants, plant products and other objects from third countries.

Part 4 makes provision in connection with official activities to prevent the establishment or spread of plant pests.

Part 5 makes provision in connection with temporary national measures, in addition to measures at the EU level, to prevent the entry of certain plant pests into Scotland, and their establishment within, and spread within, Scotland.

Part 6 makes provision in connection with registration of professional operators and in connection with the grant or issue of authorisations, licences and certificates.

Part 7 makes provision in connection with measures relating to certain solanaceous species, implementing in particular:

- Council Directive 69/464/EEC on control of Potato Wart Disease,
- Council Directive 93/85/EEC on the control of potato ring rot,
- Council Directive 98/57/EC on the control of *Ralstonia solanacearum* (Smith) Yabuuchi *et al.*,
- Council Directive 2007/33/EC on the control of potato cyst nematodes and repealing Directive 69/465/EEC.

Part 8 sets out notification requirements.

Part 9 makes provision for general powers of inspectors and enforcement.

Part 10 makes general provision in connection with notices given or served under the Regulations.

Part 11 makes provision in connection with offences and penalties.

Part 12 makes further miscellaneous provision, including consequential amendments to other secondary legislation, revocations of secondary legislation and transitional provisions.

A partial business regulatory impact assessment has been prepared for these Regulations and has been placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government, Directorate for Agriculture and Rural Economy, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD.

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