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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 613**

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

**PART 10**  
**OFFENCES**

**Offences**

**45.—(1)** A person shall be guilty of an offence if without reasonable excuse, proof of which shall lie with that person—

- (a) subject to paragraph (2), that person contravenes or fails to comply with—
  - (i) article 6(1);
  - (ii) article 9;
  - (iii) article 10(1) or (4);
  - (iv) article 16(2) or (3);
  - (v) article 18;
  - (vi) article 20(1);
  - (vii) article 21;
  - (viii) article 24(3) or (4);
  - (ix) article 26(1);
  - (x) article 27(2) or (3);
  - (xi) article 28(1);
  - (xii) article 36;
  - (xiii) article 39(1), (2) or (3);
  - (xiv) article 41(4);
  - (xv) article 42(1); and
  - (xvi) article 43(1);
- (b) that person contravenes or fails to comply with a provision or condition of a notice served, or deemed to be served, on that person or of a licence granted or of any direction given, under this Order; or
- (c) that person intentionally obstructs an inspector or any person authorised by an inspector in exercise of the powers given by or under this Order.

(2) Paragraph (1)(a) shall not apply where an article of any description is landed in Scotland in contravention of a prohibition in this Order<sup>(1)</sup>, other than the prohibition in article 6(1).

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(1) Sections 49 and 50 of the Customs and Excise Management Act 1979 (c. 2) provide respectively for forfeiture of goods improperly imported and penalties for improper importation of goods.

(3) A person shall be guilty of an offence if, for the purpose of procuring the issue of a plant passport or a replacement plant passport, a phytosanitary certificate, a phytosanitary certificate for re export or a licence under this Order, that person—

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

(4) A person shall be guilty of an offence if that person—

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

(5) Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager or secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

that individual, as well as the body corporate, shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(6) For the purposes of paragraph (5), “director” in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(7) Where an offence under this Order is committed by a partnership and is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of, a partner, that partner, as well as the partnership, shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(8) Where the commission by any person of an offence under this Order is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings for the offence are taken against the first-mentioned person.

(9) Section 136(3) of the Criminal Procedure (Scotland) Act 1995(2) (date of commencement of proceedings) shall apply for the purposes of this article as it applies for the purposes of that section.