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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 153**

**PLANT HEALTH**

**The Plant Health (Scotland) Amendment Order 2009**

<i>Made</i>	- - - -	<i>22nd April 2009</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>23rd April 2009</i>
<i>Coming into force</i>	- -	<i>15th May 2009</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 2, 3 and 4(1) of the Plant Health Act 1967(1) as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972(2), and all other powers enabling them to do so.

**Citation and commencement**

1. This Order may be cited as the Plant Health (Scotland) Amendment Order 2009 and comes into force on 15th May 2009.

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

2. The Plant Health (Scotland) Order 2005(3) is amended in accordance with articles 3 to 8.

**Amendment of Article 2**

3. In article 2(1) (general interpretation), for the definition of “Directive 2000/29/EC” substitute—  
““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(4);”.

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(1) 1967 c. 8; sections 2(1) and 3(1) were amended by the European Communities Act 1972 (c. 68), section 4(1) and Schedule 4, paragraph 8; section 3(4) was substituted by section 42 of the Criminal Justice Act 1982 (c. 48) and further amended by section 17(1) of the Criminal Justice Act 1991 (c. 53) and the Statute Law (Repeals) Act 1993 (c. 50), section 1(1) and Schedule 1, Part XIV. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(2) 1972 c. 62.

(3) S.S.I. 2005/613; amended by S.S.I. 2006/474, 2007/415 and 498 and 2008/300 and 350.

(4) O.J. No. L 169, 10.7.2000, p.1, as last amended by Commission Directive 2009/7/EC, O.J. No. L 40, 11.2.2009, p.12.

**Amendment of Schedule 1**

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

- (a) after item 11 insert “11a *Dendrolimus sibiricus* Tschetverikov”;
- (b) for item 15 substitute “15 *Diabrotica virgifera zea* Krysan & Smith”; and
- (c) after item 26 insert “26a *Rhynchophorus palmarum* (L.)”.

5. In Schedule 1, Part B (plant pests known to occur in the European Community) in the section “Insects, mites and nematodes”, after item 1 insert “1a *Diabrotica virgifera virgifera* Le Conte”.

**Amendment of Schedule 2**

6.—(1) In Schedule 2 (relevant material which may not be landed in or moved within Scotland if that material is carrying or infected with plant pests), Part A (plant pests not known to occur in the European Community)–

- (a) in the section “Insects, mites and nematodes”–
  - (i) after item 1 insert–

“1a	Plants, other than plants in tissue culture and seeds, intended for planting of <i>Fraxinus</i> L., <i>Juglans mandshurica</i> Maxim., <i>Ulmus davidiana</i> Planch., <i>Ulmus parvifolia</i> Jacq. and <i>Pterocarya rhoifolia</i> Siebold & Zucc., originating in Canada, China, Japan, Mongolia, Republic of Korea, Russia, Taiwan and USA	<i>Agrilus planipennis</i> Fairmaire”;
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- (ii) omit item 23; and
- (iii) after item 26 insert–

“26a	Tubers of <i>Solanum tuberosum</i> L.	<i>Scrobipalopsis solanivora</i> Povolny”;
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- (b) in the section “Bacteria” in the second column in item 4 omit “fruit or”;
- (c) in the section “Fungi” after item 15 insert–

“15a	Plants, other than seeds, of <i>Ulmus</i> L. and <i>Zelkova</i> L., intended for planting.	<i>Stegophora ulmea</i> (Schweinitz: Fries) Sydow & Sydow”;
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- (d) in the section “Viruses and virus-like organisms” after item 5 insert–

“5a	Plants, other than seeds, of <i>Dendranthema</i> (DC.) Des Moul. and <i>Lycopersicon</i>	Chrysanthemum stem necrosis virus”.
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*lycopersicum* (L.) Karsten ex  
Farw., intended for planting.

(2) In Schedule 2, Part B (plant pests known to occur in the European Community) in the section “Insects, mites and nematodes”–

(a) after item 7 insert–

“7a	Plants, other than fruit or seeds, of <i>Citrus</i> L., <i>Fortunella</i> Swingle, <i>Poncirus</i> Raf., and their hybrids, intended for planting.	<i>Parasaissetia nigra</i> (Nietner)”; and
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(b) after item 11(5) insert–

“12	Plants of Palmae, intended for planting, having a diameter of the stem at the base of over 5 cm and belonging to the following genera: <i>Brahea</i> Mart., <i>Butia</i> Becc., <i>Chamaerops</i> L., <i>Jubaea</i> Kunth, <i>Livistona</i> R. Br., <i>Phoenix</i> L., <i>Sabal</i> Adans., <i>Syagrus</i> Mart., <i>Trachycarpus</i> H. Wendl., <i>Trithrinax</i> Mart., <i>Washingtonia</i> Raf.	<i>Paysandisia archon</i> (Burmeister)”.
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#### Amendment of Schedule 4

7.—(1) In Schedule 4 (restrictions on the landing in and movement within Scotland of relevant material), Part A (relevant material, from third countries, which may only be landed in Scotland if special requirements are satisfied)–

(a) after item 7 insert–

“7a	Plants, other than seeds and plants in tissue culture, of <i>Fraxinus</i> L., <i>Juglans mandshurica</i> Maxim., <i>Ulmus davidiana</i> Planch., <i>Ulmus parvifolia</i> Jacq. and <i>Pterocarya rhoifolia</i> Siebold & Zucc., intended for planting, originating in Canada, China, Japan, Mongolia, the Republic of Korea, Russia, Taiwan and USA	The plants shall be accompanied by an official statement that they: <ul style="list-style-type: none"> <li>(a) have been grown throughout their life in an area free from <i>Agrilus planipennis</i> Fairmaire, established by the national plant protection organisation in accordance with ISPM No. 4; or</li> <li>(b) have, for a period of at least two years prior to export, been grown in</li> </ul>
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a place of production where no signs of *Agrilus planipennis* Fairmaire have been observed during two official inspections per year carried out at appropriate times, including immediately prior to export.”;

(b) in item 11, for “requirements in items 60, 61 and 64” in column (3) substitute “provisions applicable to the plants in item 7”;

(c) after item 35 insert–

“35a	Tubers of <i>Solanum tuberosum</i> L., other than those intended for planting	Without prejudice to the provisions applicable to tubers listed in items 32 to 34, the plants shall be accompanied by an official statement that the tubers originate in areas in which <i>Pseudomonas solanacearum</i> (Smith) Smith is not known to occur.
35b	Tubers of <i>Solanum tuberosum</i> L.	Without prejudice to the provisions applicable to tubers listed in items 32 to 35a, the plants shall be accompanied by an official statement that: <ul style="list-style-type: none"> <li>(a) the tubers originate in a country where <i>Scrobipalopsis solanivora</i> Povolny is not known to occur; or</li> <li>(b) the tubers originate in an area free from <i>Scrobipalopsis solanivora</i> Povolny, established by the national plant protection organisation in accordance with ISPM No. 4.”;</li> </ul>

(d) omit item 39;

(e) after item 43 insert–

“43a	Plants, other than seeds, of <i>Dendranthema</i> (DC.) Des Moul. and <i>Lycopersicon lycopersicum</i> (L.) Karsten ex Farw., intended for planting.	Without prejudice to the requirements applicable to the plants listed in items 36, 37, 38, 41 to 43, the plants shall
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be accompanied by an official statement that:

- (a) the plants have been grown throughout their life in a country free from Chrysanthemum stem necrosis virus; or
- (b) the plants have been grown throughout their life in an area established by the national plant protection organisation in the country of export as being free from Chrysanthemum stem necrosis virus in accordance with ISPM No. 4; or
- (c) the plants have been grown throughout their life in a place of production, established as being free from Chrysanthemum stem necrosis virus and verified through official inspections and, where appropriate, testing.”; and

(f) after item 57a(6) insert–

“57b

Plants of Palmae, intended for planting, having a diameter of the stem at the base of over 5 cm and belonging to the following genera:

*Brahea* Mart., *Butia* Becc., *Chamaerops* L., *Jubaea* Kunth, *Livistona* R. Br., *Phoenix* L., *Sabal* Adans., *Syagrus* Mart., *Trachycarpus* H. Wendl., *Trithrinax* Mart., *Washingtonia* Raf.

Without prejudice to the provisions applicable to the plants listed in items 57 and 57a, the plants shall be accompanied by an official statement that the plants:

- (a) have been grown throughout their life in a country where *Paysandisia archon* (Burmeister) is not known to occur; or
- (b) have been grown throughout their life in an area free from *Paysandisia archon* (Burmeister), established by the national plant

- protection organisation in accordance with ISPM No. 4; or
- (c) have, during a period of at least two years prior to export, been grown in a place of production:
- which is registered and supervised by the national plant protection organisation in the country of origin; and
  - where the plants were placed in a site with complete physical protection against the introduction of *Paysandisia archon* (Burmeister) or with application of appropriate preventive treatments, and
  - where, during three official inspections per year carried out at appropriate times, including immediately prior to export, no signs of *Paysandisia archon* (Burmeister) have been observed.”.

(2) In Schedule 4, Part B (relevant material, from another part of the European Community, which may only be landed in or moved within Scotland if special requirements are satisfied), after item 22 insert—

“22a	Plants of Palmae, intended for planting, having a diameter of the stem at the base of over 5 cm and belonging to the following genera: <i>Brahea</i> Mart., <i>Butia</i> Becc., <i>Chamaerops</i> L., <i>Jubaea</i> Kunth, <i>Livistona</i> R. Br., <i>Phoenix</i> L., <i>Sabal</i> Adans., <i>Syagrus</i>	The plants are accompanied by an official statement that the plants: (a) have been grown throughout their life in an area free from <i>Paysandisia archon</i> (Burmeister), established by the national plant protection organisation
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- Mart., *Trachycarpus* H.  
Wendl., *Trithrinax* Mart.,  
*Washingtonia* Raf. (b)
- in accordance with ISPM No. 4; or  
have, during a period of at least two years prior to movement, been grown in a place of production:
- which is registered and supervised by the responsible official body in the Member State of origin, and
  - where the plants were placed in a site with complete physical protection against the introduction of *Paysandisia archon* (Burmeister) or with application of appropriate preventive treatments, and
  - where, during three official inspections per year carried out at appropriate times, no signs of *Paysandisia archon* (Burmeister) have been observed.”
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#### **Amendment of Schedule 6**

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

- “(ca) Plants of Palmae, intended for planting, having a diameter of the stem at the base of over 5 cm and belonging to the following genera: *Brahea* Mart., *Butia* Becc., *Chamaerops* L., *Jubaea* Kunth, *Livistona* R. Br., *Phoenix* L., *Sabal* Adans., *Syagrus* Mart., *Trachycarpus* H. Wendl., *Trithrinax* Mart., *Washingtonia* Raf.”

St Andrew’s House,  
Edinburgh  
22nd April 2009

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

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

This Order amends the Plant Health (Scotland) Order 2005 (“the principal Order”) so as to implement Commission Directive [2009/7/EC](#) amending Annexes I, II, IV and V to 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 (O.J. No. L 40, 11.2.2009, p.12).

Articles 4 to 8 make various amendments to Schedules 1, 2, 4 and 6 to the principal Order so as to apply new restrictions on the introduction into Scotland of certain plants and plant pests. The following harmful organisms, which are so far not known to be present in the Community, have been added to the list of prohibited organisms:–

- *Dendrolimus sibiricus* (Siberian coniferous silk moth),
- *Rhynchophorus palmarum* (American palm weevil),
- *Agrilus planipennis* (Emerald ash borer) on plants of *Fraxinus*, *Juglans mandshurica*, *Ulmus davidiana*, *Ulmus parvifolia* and *Pterocarya rhoifolia*,
- Chrysanthemum stem necrosis virus on plants of *Dendranthema* and *Lycopersicon lycopersicum*,
- *Scrobipalopsis solanivora* (Guatemalan potato moth) on tubers of *Solanum tuberosum*,
- *Stegophora ulmea* (Elm black spot) on plants of *Ulmus* and *Zelkova*, intended for planting other than seeds.

Amendments are also made to controls on pests which are known to be present in the community, namely–

- *Parasaissetia nigra* (Nietner) (Nigra scale); and
- *Paysandisia archon* (Burmeister) (Palm borer).

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