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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 83**

**PLANT HEALTH**

**The Plant Health (Scotland) Amendment Order 2016**

*Made* - - - - 2nd February 2016  
*Laid before the Scottish Parliament* - - - - 4th February 2016  
*Coming into force* - - 21st March 2016

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), section 20 of the Agriculture (Miscellaneous Provisions) Act 1972(2), paragraph 1A of Schedule 2 to the European Communities Act 1972(3) and all other powers enabling them to do so.

This Order makes provision for preventing the introduction and spread of pests in Scotland and is, in part, called for by EU obligations in Commission Implementing Directive 2014/78/EU amending Annexes I, II, III, 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(4); Commission Implementing Decision 2014/237/EU on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain fruits and vegetables originating in India(5); Commission Implementing Decision (EU) 2015/237 amending Implementing Decision 2014/237/EU on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain fruits and vegetables originating in India(6); Commission Implementing Decision (EU) 2015/749 repealing Decision 2007/410/EC on measures to prevent the introduction into and the spread within the Community of Potato spindle tuber viroid(7); 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.)(8); Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky)(9);

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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 and further amended by S.I. 2011/1043. Section 3(4) was substituted by the Criminal Justice Act 1982 (c.48), section 42 and the Statute Law (Repeals) Act 1993 (c.50), section 1(1) and Schedule 1, Part XIV. There are other amendments which are not relevant to this Order. The functions of the Secretary of State, so far as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
- (2) 1972 c.62.
- (3) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by the European Union (Amendment) Act 2008 (c.7), section 3(3) and Schedule, Part 1.
- (4) OJ L 183, 24.6.2014, p.23.
- (5) OJ L125, 26.4.2014, p.93, as last amended by Commission Implementing Decision (EU) 2015/2434 (OJ L 334, 22.12.2015, p.61).
- (6) OJ L 39, 14.2.2015, p.21.
- (7) OJ L 119, 12.5.2015, p.25.
- (8) OJ L 125, 21.5.2015, p.36, as amended by Commission Implementing Decision (EU) 2015/2417 (OJ L 333, 19.12.2015, p.143).
- (9) OJ L 146, 11.6.2015, p.16.

Commission Implementing Decision (EU) 2015/1199 recognising Bosnia and Herzegovina as being free from *Clavibacter michiganensis* ssp. *sepedonicus* (Speckerman and Kotthoff) Davis et al.(10); Commission Implementing Decision (EU) 2015/1849 on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain vegetables originating in Ghana(11); Commission Implementing Decision (EU) 2015/2417 amending 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.)(12); and Commission Implementing Decision (EU) 2015/2434 amending Implementing Decision 2014/237/EU on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain fruits and vegetables originating in India(13).

This Order makes provision for a purpose mentioned in section 2 of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for references to 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.) to be construed as references to that instrument as amended from time to time.

### Citation and commencement

1. This Order may be cited as the Plant Health (Scotland) Amendment Order 2016 and comes into force on 21st March 2016.

### Amendment of the Plant Health (Scotland) Order 2005

2. The Plant Health (Scotland) Order 2005(14) is amended in accordance with articles 3 to 13.

### Amendment of Part 1

3. In article 2(1) (general interpretation)—

(a) omit the definition of “Decision 2007/410/EC”(15);

(b) after the definition of “Decision 2012/138/EU”(16) insert—

““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.)(17), as amended from time to time;

“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)(18);”;

(c) in the definition of “ISPMNo. 5”(19) for “as last modified in May 2012” substitute “as last published on 25th June 2015”; and

(10) OJ L 194, 22.7.2015, p.42.

(11) OJ L 268, 15.10.2015, p.33.

(12) OJ L 333, 19.12.2015, p.143.

(13) OJ L 334, 22.12.2015, p.61.

(14) S.S.I. 2005/613, as amended by S.S.I. 2006/474, S.S.I. 2007/415, S.S.I. 2007/498, S.S.I. 2008/300, S.S.I. 2008/350, S.S.I. 2009/153, S.S.I. 2010/206, S.S.I. 2010/342, S.I. 2011/1043, S.S.I. 2012/266, S.S.I. 2012/326, S.S.I. 2013/5, S.S.I. 2013/187, S.S.I. 2013/366, S.S.I. 2014/140 and S.S.I. 2015/10.

(15) The omitted definition was inserted by S.S.I. 2007/498.

(16) The definition of Decision 2012/138/EU was inserted by S.S.I. 2012/266.

(17) OJ L 125, 21.5.2015, p.36, as amended by Commission Implementing Decision (EU) 2015/2417 (OJ L 333, 19.12.2015, p.143).

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

(19) The definition was inserted by S.S.I. 2013/187.

(d) after the definition of “plant trader” insert—

““plants specified in relation to *Xylella fastidiosa* (Wells et al.)” means any plants for planting, other than seeds, belonging to the genera or species—

- (a) listed in Annex I to Decision (EU) 2015/789; or
- (b) published in the database of host plants<sup>(20)</sup> by the European Commission pursuant to Article 1(b) of that Decision;”.

### Amendment of Part 2

4. In article 15 (general provisions relating to certificates) omit paragraph (4).

### Amendment of Part 3

5.—(1) In article 19A (landing of potatoes in Scotland)<sup>(21)</sup>, in paragraph (2)(b) for “Spain” substitute “any area of Spain which is within the European Union”.

(2) In article 19B (landing of trees in Scotland)<sup>(22)</sup>—

(a) for paragraph (1) substitute—

“(1) Subject to article 22, in respect of plants to which this article applies a person must give written notification to an inspector prior to, or no later than five days after, the landing of those plants.”;

(b) in paragraph (2)(a) and (b)<sup>(23)</sup>, after “*Platanus* L.,” insert “*Prunus* L.”; and

(c) in paragraph (3)—

(i) at the end of sub-paragraph (a) insert “or, as the case may be, the date the plants were landed”; and

(ii) at the end of sub-paragraph (b) insert “or, as the case may be, the destination of those plants”.

(3) In article 22(3) (exceptions from certain prohibitions and requirements)<sup>(24)</sup>—

(a) at the end of sub-paragraph (a) insert “and”;

(b) at the end of sub-paragraph (b) omit “and”; and

(c) omit sub-paragraph (c).

### Amendment of Part 4

6. After article 28 (conditions for maintaining registration as a plant trader) insert—

#### “Duties of professional operators in relation to *Xylella fastidiosa* (Wells et al.)

28A.—(1) Paragraphs (2) and (3) apply to any plants specified in relation to *Xylella fastidiosa* (Wells et al.) which have been grown for at least part of their lives in an area demarcated under a legislative or administrative procedure in an EU member State in accordance with Article 4 of Decision (EU) 2015/789.

(2) A professional operator who supplies plants to which this paragraph applies must—

<sup>(20)</sup> “Host plants” are those having been found to be susceptible in the Union territory to *Xylella fastidiosa* (Wells et al.) or, where a member State has demarcated an area with regard to only one or more subspecies of that organism pursuant to the second sub-paragraph of Article 4(1) of Decision (EU) 2015/789, as having been found to be susceptible to that or those subspecies.

<sup>(21)</sup> Article 19A was substituted by S.S.I. 2013/5.

<sup>(22)</sup> Article 19B was inserted by S.S.I. 2013/187.

<sup>(23)</sup> Article 19B(2) was substituted by S.S.I. 2014/140.

<sup>(24)</sup> Article 22(3) was inserted by S.S.I. 2015/10.

- (a) keep a record of each lot supplied and the name of the professional operator to whom it was supplied, for a period of 3 years beginning with the date on which the lot was supplied; and
  - (b) immediately following the dispatch of a lot, notify the Scottish Ministers in writing of the matters mentioned in paragraph (4).
- (3) A professional operator who is supplied with plants to which this paragraph applies must—
- (a) keep a record of each lot received and the name of the professional operator who supplied it, for a period of 3 years beginning with the date on which the lot was supplied; and
  - (b) immediately following the receipt of a lot, notify the Scottish Ministers in writing of the matters mentioned in paragraph (4).
- (4) The matters in relation to the lot concerned are—
- (a) its origin;
  - (b) the consigner;
  - (c) the consignee;
  - (d) the place of destination;
  - (e) the individual serial, week or batch number of the plant passport;
  - (f) the invoice number or delivery note; and
  - (g) the quantity of plants within the lot.
- (5) In this article “professional operator” has the meaning given to it by Article 1(d) of Decision (EU) 2015/789.”.

#### **Amendment of Part 10**

7. In article 45(1) (offences) after sub-paragraph (a)(xi) insert—
- “(xia) article 28A(2) or (3);”.

#### **Amendment of Schedule 1**

8. In Schedule 1 (plant pests which shall not be landed in or spread within Scotland), in Part B (plant pests known to occur in the European Union) under the heading “**Bacteria**”, for item 4 substitute—

“4. *Xylella fastidiosa* (Wells et al.)(25)

#### **Amendment of Schedule 3**

9. In Schedule 3 (relevant material which may not be landed in Scotland if that material originates in certain third countries)—

- (a) in item 8, after “Algeria,” insert “Bosnia and Herzegovina,”; and
- (b) after item 15 insert—

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(25) Item 4 was inserted by [S.S.I. 2015/10](#). It referred to *Xylella fastidiosa* (Well and Raju). This reference was consistent with the nomenclature in Council [Directive 2000/29/EC](#) (OJ L 169, 10.7.2000, p.1), Annex I, Part A, Section 1(b), item 1 and in Commission Implementing [Decision 2014/497/EU](#) (OJ L 219, 25.7.2014, p.56). In contrast, Commission Implementing Decision (EU) 2015/789 (OJ L 125, 21.5.2015, p.36) which repeals Commission Implementing [Decision 2014/497/EU](#) refers to the bacteria as *Xylella fastidiosa* (Wells et al.). This substitution reflects the recent change in terminology.

“16.	Plants intended for planting, other than seeds, of <i>Coffea</i> .	Costa Rica, Honduras
17.	Plants other than seeds and roots of <i>Colocasia</i> Schott and plants other than seeds of <i>Momordica</i> L., <i>Solanum melongena</i> L. and <i>Trichosanthes</i> L.	India
18.	Plants, other than seeds, of <i>Capsicum</i> L., <i>Lagenaria</i> Ser., <i>Luffa</i> Mill., <i>Momordica</i> L. and <i>Solanum</i> L., other than <i>Solanum lycopersicum</i> L.	Ghana.”

#### Amendment of Schedule 4

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

(a) after item 7b(26) insert—

“7c.	Plants, other than fruit or seeds, but including cut branches with or without foliage, of <i>Fraxinus</i> L., <i>Juglans ailantifolia</i> Carr., <i>Juglans mandshurica</i> Maxim., <i>Ulmus davidiana</i> Planch. or <i>Pterocarya rhoifolia</i> Siebold & Zucc., originating in Canada, China, the Democratic People’s Republic of Korea, Japan, Mongolia, the Republic of Korea, Russia, Taiwan or the USA	Without prejudice to the requirement in item 7b, the plants must be accompanied by an official statement that they originate in an area recognised as being free from <i>Agrilus planipennis</i> Fairmaire for the purposes of point 11.4 of Annex IV, Part A, Section I of <a href="#">Directive 2000/29/EC</a> and which is mentioned on the phytosanitary certificate or phytosanitary certificate for re-export.”
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(b) omit item 37a(27);

(c) after item 85(28) insert—

“85a.	Plants, other than fruit but including seeds of <i>Aegle</i> Corrêa, <i>Aeglopsis</i> Swingle, <i>Afraegle</i> Engl, <i>Atalantia</i> Corrêa, <i>Balsamocitrus</i> Stapf, <i>Burkillanthus</i> Swingle, <i>Calodendrum</i> Thunb., <i>Choisya</i> Kunth, <i>Clausena</i> Burm. f., <i>Limonia</i> L., <i>Microcitrus</i> Swingle., <i>Murraya</i> J. Koenig ex L., <i>Pamburus</i> Swingle, <i>Severinia</i> Ten., <i>Swinglea</i> Merr., <i>Triphasia</i> Lour. and <i>Vepris</i> Comm. and seeds of <i>Citrus</i> L., <i>Fortunella</i> Swingle and <i>Poncirus</i> Raf., originating in any third country	Without the prejudice to the requirements in items 84 and 85, the plants must be accompanied by an official statement that they originate in a country recognised as being free from <i>Candidatus Liberibacter</i> spp., a causal agent of Huanglongbing disease of citrus/citrus greening.”
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(d) for item 86(29) substitute—

(26) Item 7b was inserted by [S.S.I. 2012/326](#).

(27) Item 37a was inserted by [S.S.I. 2007/498](#).

(28) Item 85 was inserted by [S.S.I. 2015/10](#).

(29) Item 86 was inserted by [S.S.I. 2015/10](#).

“86.	Plants specified in relation to <i>Xylella fastidiosa</i> (Wells et al.), originating in any third country where the national plant protection organisation of that country has confirmed in writing to the European Commission that <i>Xylella fastidiosa</i> (Wells et al.) is not present in that country	The plants must be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which contains, under the rubric “Additional declaration”, an official statement that the plants originate in a country known to be free from <i>Xylella fastidiosa</i> (Wells et al.).
87.	Plants specified in relation to <i>Xylella fastidiosa</i> (Wells et al.), originating in any third country where <i>Xylella fastidiosa</i> (Wells et al.) is known to be present	<p>The plants must be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which includes—</p> <ul style="list-style-type: none"> <li>(a) in the case of plants originating in an area which has been established as free from <i>Xylella fastidiosa</i> (Wells et al.) in accordance with ISPM No. 10 and which has been notified to the European Commission as a pest-free area by the relevant national plant protection organisation, the name of the pest-free area under the rubric “place of origin”; or</li> <li>(b) in the case of plants which originate in an area in which <i>Xylella fastidiosa</i> (Wells et al.) is known to be present— <ul style="list-style-type: none"> <li>(i) an official statement under the rubric “Additional declaration”, that the plants and the site in which they were produced meet the requirements of Article 17(3) and (4) of Decision (EU) 2015/789; and</li> <li>(ii) the name of the site from which they originate, under the rubric “place of origin”.</li> </ul> </li> </ul>
88.	Plants intended for planting that have a stem diameter of 1 centimetre or more at their thickest point, other than seeds of <i>Acer</i> spp., <i>Aesculus</i> spp., <i>Alnus</i> spp., <i>Betula</i> spp., <i>Carpinus</i> spp., <i>Cercidiphyllum</i> spp., <i>Corylus</i> spp., <i>Fagus</i> spp., <i>Fraxinus</i> spp., <i>Koelreuteria</i> spp., <i>Platanus</i> spp., <i>Populus</i> spp., <i>Salix</i> spp., <i>Tilia</i> spp. and <i>Ulmus</i> spp., originating in any third country where <i>Anoplophora glabripennis</i> (Motschulsky) is known to be present.	<p>The plants must be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which includes, under the rubric “Additional declaration”, an official statement—</p> <ul style="list-style-type: none"> <li>(a) that the plants have been grown throughout their life in a place of production which is registered and supervised by the national plant protection organisation in the country of origin and situated in a pest-free area established in accordance with ISPM No. 4 (the name of the pest-free area to be</li> </ul>

included on the certificate under the rubric “place of origin”); or

- (b) that—
  - (i) the plants have been grown during a period of at least 2 years prior to export (or in the case of plants which are younger than 2 years, throughout their life) in a place of production which is registered and supervised by the national plant protection organisation in the country of origin, which is established as free from *Anoplophora glabripennis* (Motschulsky) in accordance with ISPM No. 10 and which has been subjected annually to at least 2 meticulous official inspections, carried out at appropriate times for any sign of *Anoplophora glabripennis* (Motschulsky) and no sign of the organism has been found;
  - (ii) the plants have been grown in a site—
    - (aa) with complete physical protection against the introduction of *Anoplophora glabripennis* (Motschulsky); or
    - (bb) with the application of appropriate preventive treatments and surrounded by a buffer zone with a radius of at least 2 kilometres in which official surveys for the presence or signs of *Anoplophora glabripennis* (Motschulsky) are carried out annually at appropriate times and, where the presence or signs of the organism have been found, eradication measures are taken immediately to restore the pest freedom of the buffer zone; and
  - (iii) immediately prior to export, consignments of the plants have been subjected to a meticulous official inspection for the presence of *Anoplophora glabripennis* (Motschulsky), in particular in the stems and branches of the plants, and such inspection has included targeted destructive sampling which, in the case of plants originating

		<p>in sites which were at the time of production located in a buffer zone where the presence or signs of <i>Anoplophora glabripennis</i> (Motschulsky) were found has been carried out at the level set out in the following table—</p> <table border="1" data-bbox="882 577 1310 853"> <thead> <tr> <th data-bbox="882 577 1070 752">Number of plants in lot</th> <th data-bbox="1070 577 1310 752">Level of destructive sampling (number of plants to be destroyed)</th> </tr> </thead> <tbody> <tr> <td data-bbox="882 752 1070 801">1 - 4500</td> <td data-bbox="1070 752 1310 801">10% of lot size</td> </tr> <tr> <td data-bbox="882 801 1070 853">&gt; 4500</td> <td data-bbox="1070 801 1310 853">450</td> </tr> </tbody> </table> <p>; or</p> <p>(c) that the plants have been grown from rootstocks which meet the requirements of sub-paragraph (b), grafted with scions which meet the following requirements—</p> <p>(i) at the time of export, the grafted scions are no more than 1 centimetre in diameter at their thickest point; and</p> <p>(ii) the grafted plants have been inspected in accordance with sub-paragraph (b)(iii).</p>	Number of plants in lot	Level of destructive sampling (number of plants to be destroyed)	1 - 4500	10% of lot size	> 4500	450
Number of plants in lot	Level of destructive sampling (number of plants to be destroyed)							
1 - 4500	10% of lot size							
> 4500	450							
89.	Plants of <i>Mangifera</i> L., other than seeds, originating in India	The plants must be accompanied by a phytosanitary certificate which includes an official statement under the heading “Additional declaration” describing the appropriate measures taken to ensure freedom from harmful organisms.”						

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

- (a) in column 3 of item 15, for “19a and 19b” substitute “19a, 19b and 19c”;
- (b) in column 3 of item 15a(30), for “19a, and 19b” substitute “19a, 19b and 19c”;
- (c) in column 3 of item 19(31), for “19a and 19b” substitute “19a, 19b and 19c”;
- (d) in column 3 of item 19a(32) re-number sub-paragraphs (c), (d) and (e) as sub-paragraphs (b), (c) and (d) respectively;
- (e) for item 19b(33) substitute—

(30) Item 15a was inserted by S.S.I. 2015/10.

(31) Item 19 was substituted by S.S.I. 2015/10.

(32) Item 19a was substituted by S.S.I. 2015/10.

(33) Item 19b was inserted by S.S.I. 2013/5.



“19b.	Tubers of <i>Solanum tuberosum</i> L. which originate in Spain, other than those which originate in:  — a demarcated area mentioned in column 2 of item 19a; or  — the Balearic Islands	Without prejudice to the requirements in items 15 to 19 the tubers shall have been washed so that there is no more than 0.1 per cent of soil remaining in order to remove <i>Epitrixcucumeris</i> (Harris), <i>Epitrixisimilaris</i> (Gentner), <i>Epitrixisubcrinita</i> (Lec.) or <i>Epitrixtuberis</i> (Gentner) and to ensure that there is no risk of spreading those organisms.
19c.	Tubers of <i>Solanum tuberosum</i> L. which originate in Poland, other than those mentioned in column 2 of items 16 to 18	Without prejudice to the requirements of items 19 and 19a the tubers shall be accompanied by a certificate issued by the responsible official body in Poland confirming that they have been found to be free from <i>Clavibacter michiganensis</i> ssp. <i>sepedonicus</i> (Spieckerman and Kotthoff) Davis et al. in official laboratory tests.”

(f) omit item 20a(34);

(g) in column 3 of item 33, in sub-paragraph (c)(35), for “*Ditylenchus dipsaci*” substitute “*Ditylenchus dipsaci*”;

(h) for item 40(36) substitute—

“40.	Plants specified in relation to <i>Xylella fastidiosa</i> (Wells et al.), which have been grown for at least part of their life in an area demarcated under a legislative or administrative procedure in a member State in accordance with Article 4 of Decision (EU) 2015/789	The plants must be accompanied by an official statement that they—  (a) have been grown in a site which meets the requirements of Article 9(2) and (3) of Decision (EU) 2015/789; and  (b) meet the requirements of Article 9(4) and (5) of that Decision; or  (c) in the case of dormant plants of <i>Vitis</i> , intended for planting (other than seeds)—  (i) have been grown in a site which meets the requirements of Article 9(2)(a) of that Decision; and  (ii) have, as close to the time of movement as is practically
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(34) Item 20a was inserted by S.S.I. 2007/498.

(35) Sub-paragraph (c) was inserted by S.S.I. 2015/10.

(36) Item 40 was inserted by S.S.I. 2015/10.

		<p>possible, undergone an appropriate thermotherapy treatment in a treatment facility authorised and supervised by the responsible official body for that purpose, whereby the dormant plants are submerged for 45 minutes in water heated to 50 degrees Celsius, in accordance with the European and Mediterranean Plant Protection Organisation standard: Hot water treatment of grapevine to control <i>Grapevine flavescence dorée</i> phytoplasma(37).</p>
41.	<p>Plants intended for planting that have a stem diameter of 1 centimetre or more at their thickest point, other than seeds of <i>Acer</i> spp., <i>Aesculus</i> spp., <i>Alnus</i> spp., <i>Betula</i> spp., <i>Carpinus</i> spp., <i>Cercidiphyllum</i> spp., <i>Corylus</i> spp., <i>Fagus</i> spp., <i>Fraxinus</i> spp., <i>Koelreuteria</i> spp., <i>Platanus</i> spp., <i>Populus</i> spp., <i>Salix</i> spp., <i>Tilia</i> spp. and <i>Ulmus</i> spp., which originate in an area demarcated under a legislative or administrative procedure in a member State in accordance with Article 7 of Decision (EU) 2015/893 or which were introduced into a place of production in such an area</p>	<p>The plants must be accompanied by an official statement—</p> <ul style="list-style-type: none"> <li>(a) in the case of plants which originate in an area demarcated in accordance with Article 7 of Decision (EU) 2015/893, that they have been grown during a period of at least 2 years prior to movement, or in the case of plants which are younger than 2 years, throughout their life in a place of production— <ul style="list-style-type: none"> <li>(i) which is registered in accordance with <a href="#">Directive 92/90/EEC</a>; and</li> <li>(ii) which has been subjected annually to at least 2 meticulous official inspections, carried out at appropriate times, for any sign of <i>Anoplophora glabripennis</i> (Motschulsky) and no signs of the organism have been found and such inspection has, where appropriate, included targeted destructive sampling of the stems and branches of the plants; and</li> </ul> </li> <li>(b) in the case of plants which originate in an area mentioned in subparagraph (a) or which were introduced into a place of production in such an area, that the plants have been grown in a site— <ul style="list-style-type: none"> <li>(i) with complete physical protection against the introduction of <i>Anoplophora glabripennis</i> (Motschulsky); or</li> </ul> </li> </ul>

	<p>(ii) with the application of appropriate preventive treatments or where targeted destructive sampling is carried out on each lot of specified plants prior to movement at the level set out in the table below and, in any case, where official surveys for the presence or signs of <i>Anoplophora glabripennis</i> (Motschulsky) are carried out annually, at appropriate times, within a radius of at least 1 kilometre around the site and the presence, or signs, of <i>Anoplophora glabripennis</i> (Motschulsky) have not been found.</p> <table border="1" data-bbox="895 840 1321 1115"> <thead> <tr> <th>Number of plants in lot</th> <th>Level of destructive sampling (number of plants to be destroyed)</th> </tr> </thead> <tbody> <tr> <td>1 – 4500</td> <td>10% of lot size</td> </tr> <tr> <td>&gt; 4500</td> <td>450</td> </tr> </tbody> </table> <p>; and</p> <p>(c) in the case of plants grown from rootstocks that comply with sub-paragraphs (a) and (b) but which have been grafted with scions which do not comply with those sub-paragraphs, that the rootstocks have been grafted with scions which are no more than 1 centimetre in diameter at their thickest point.”</p>	Number of plants in lot	Level of destructive sampling (number of plants to be destroyed)	1 – 4500	10% of lot size	> 4500	450
Number of plants in lot	Level of destructive sampling (number of plants to be destroyed)						
1 – 4500	10% of lot size						
> 4500	450						

(3) In Schedule 4, in Part C (relevant material which may only be landed in or moved within Scotland (as a protected zone) if special requirements are satisfied), in column 3 of item 4(38) re-number sub-paragraphs (c) and (d) as sub-paragraphs (b) and (c) respectively.

#### Amendment of Schedule 5

11. In Schedule 5 (relevant material from a third country for which a phytosanitary certificate may be required), in Part A (relevant material which may only be landed in Scotland if accompanied by a phytosanitary certificate) after paragraph 8(39) insert—

“9. Plants of *Mangifera* L., other than seeds, originating in India.”

(38) Item 4 was inserted by S.S.I. 2015/10.

(39) Paragraph 8 was inserted by S.S.I. 2013/187.

**Amendment of Schedule 6**

**12.** In Schedule 6 (prohibitions on the landing in and movement within Scotland of relevant material without a plant passport), in Part A (relevant material, from Scotland or elsewhere in the European Union, which may only be landed in or moved within Scotland if accompanied by a plant passport)—

- (a) omit paragraph 3a(40);
- (b) in paragraph 7(b)(41), for “items 3 and 3a” substitute “paragraph 3”; and
- (c) for paragraph 12(42) substitute—

“12.—(1) Subject to sub-paragraph (2)—

- (a) plants specified in relation to *Xylella fastidiosa* (Wells et al.) which have been grown for at least part of their life in an area demarcated under a legislative or administrative procedure in a member State in accordance with Article 4 of Decision (EU) 2015/789; and
- (b) host plants which have never been grown in such a demarcated area.

(2) Without prejudice to any requirement imposed elsewhere in this Schedule, no plant passport is required in respect of the movement of host plants to a person for that person’s own use and for purposes which are outside of that person’s trade, business or profession.

(3) In this paragraph, “host plants” has the meaning given to it by Article 1(b) of Decision (EU) 2015/789.

**13.** Plants intended for planting that have a stem diameter of 1 centimetre or more at their thickest point, other than seeds, of *Acer* spp., *Aesculus* spp., *Alnus* spp., *Betula* spp., *Carpinus* spp., *Cercidiphyllum* spp., *Corylus* spp., *Fagus* spp., *Fraxinus* spp., *Koelreuteria* spp., *Platanus* spp., *Populus* spp., *Salix* spp., *Tilia* spp. and *Ulmus* spp. which—

- (a) originate in any third country where *Anoplophora glabripennis* (Motschulsky) is known to be present;
- (b) originate in an area demarcated under a legislative or administrative procedure in a member State in accordance with Article 7 of Decision (EU) 2015/893; or
- (c) have not been grown in, but are introduced into, such a demarcated area.”.

**Amendment of Schedule 7**

**13.** In Schedule 7 (prohibitions on the consignment of relevant material to another part of the European Union without a plant passport), in Part A (relevant material which may only be consigned to another part of the European Union if accompanied by a plant passport)—

- (a) omit paragraph 3a(43);
- (b) in paragraph 7(b)(44), for “items 3 and 3a” substitute “paragraph 3”; and
- (c) for paragraph 12(45) substitute—

“12.—(1) Subject to sub-paragraph (2)—

- (a) plants specified in relation to *Xylella fastidiosa* (Wells et al.) which have been grown for at least part of their life in an area demarcated under a legislative

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(40) Paragraph 3a was inserted by S.S.I. 2007/498.

(41) Paragraph 7(b) was substituted by S.S.I. 2007/498.

(42) Paragraph 12 was inserted by S.S.I. 2015/10.

(43) Paragraph 3a was inserted by S.S.I. 2007/498.

(44) Paragraph 7(b) was substituted by S.S.I. 2007/498.

(45) Paragraph 12 was inserted by S.S.I. 2015/10.

or administrative procedure in a member State in accordance with Article 4 of Decision (EU) 2015/789; and

(b) host plants which have never been grown in such a demarcated area.

(2) Without prejudice to any requirement imposed elsewhere in this Schedule, no plant passport is required in respect of the movement of host plants to a person for that person's own use and for purposes which are outside of that person's trade, business or profession.

(3) In this paragraph, "host plants" has the meaning given to it by Article 1(b) of Decision (EU) 2015/789.

**13.** Plants intended for planting that have a stem diameter of 1 centimetre or more at their thickest point, other than seeds, of *Acer* spp., *Aesculus* spp., *Alnus* spp., *Betula* spp., *Carpinus* spp., *Cercidiphyllum* spp., *Corylus* spp., *Fagus* spp., *Fraxinus* spp., *Koelreuteria* spp., *Platanus* spp., *Populus* spp., *Salix* spp., *Tilia* spp. and *Ulmus* spp. which—

(a) originate in any third country where *Anoplophora glabripennis* (Motschulsky) is known to be present;

(b) originate in an area demarcated under a legislative or administrative procedure in a member State in accordance with Article 7 of Decision (EU) 2015/893; or

(c) have not been grown in, but are introduced into, such a demarcated area.”.

## Revocations

**14.** The following articles are revoked—

(a) articles 5(1), (2), (3) and (4)(a) of the Plant Health (Scotland) Amendment (No. 2) Order 2007<sup>(46)</sup>; and

(b) articles 9(2)(o), 11(1)(c) and 12(1)(c) of the Plant Health (Scotland) Amendment Order 2015<sup>(47)</sup>.

## Amendment of the Plant Health (Scotland) Amendment Order 2015

**15.** In article 13(c) (revocations) of the Plant Health (Scotland) Amendment Order 2015<sup>(48)</sup>, after “Amendment” insert “Order”.

St Andrew's House,  
Edinburgh  
2nd February 2016

*AILEEN MCLEOD*  
Authorised to sign by the Scottish Ministers

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<sup>(46)</sup> S.S.I. 2007/498.

<sup>(47)</sup> S.S.I. 2015/10.

<sup>(48)</sup> S.S.I. 2015/10.

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## EXPLANATORY NOTE

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

This Order amends the Plant Health (Scotland) Order 2005 ([S.S.I. 2005/613](#)) (“the principal Order”).

### **Phytosanitary certificates**

Article 4 amends article 15 of the principal Order (general provisions relating to certificates) to remove the requirement for phytosanitary certificates or phytosanitary certificates for re-export to be based on an inspection performed 14 days before the date of dispatch of the relevant material.

### **Notification requirements**

Article 5(2)(a) amends article 19B of the principal Order (landing of trees in Scotland) to change the period during which notice must be given of the landing of plants to which article 19B applies from 24 hours in advance of landing to any time prior to or within 5 days of the landing of those plants. Article 5(2)(b) adds plants of the genera *Prunus* L. to the list of plants to which the notification requirement of article 19B applies.

### **Commission Implementing Decisions 2014/237/EU; (EU) 2015/237 and (EU) 2015/2434**

Article 9(b) inserts item 17 into Schedule 3 of the principal Order (relevant material which may not be landed in Scotland if that material originates in certain third countries) for the purposes of implementing the prohibition on certain fruits and vegetables originating in India contained in Commission Implementing [Decision 2014/237/EU](#) on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain fruits and vegetables originating in India (OJ L 125, 26.4.2014, p.93) as amended by Commission Implementing Decision (EU) 2015/2434 (OJ L 334, 22.12.2015, p.61). Article 10(1)(d) introduces item 89 into Part A of Schedule 4 to the principal Order (relevant material, from third countries, which may only be landed in Scotland if special requirements are satisfied) for the purposes of implementing Commission Implementing Decision (EU) 2015/237 (OJ L 39, 14.2.2015, p.21) (which amended Commission Implementing [Decision 2014/237/EU](#)) with the effect that Indian mango plants must be accompanied by an official statement describing the measures taken to ensure freedom from harmful organisms. Article 11 also implements Commission Implementing Decision (EU) 2015/237 by inserting paragraph 9 into Part A of Schedule 5 to the principal Order (relevant material which may only be landed in Scotland if accompanied by a phytosanitary certificate) with the effect that Indian mango plants may only be landed in Scotland if they are accompanied by a phytosanitary certificate.

### **Commission Implementing Decision (EU) 2015/749**

Articles 3(a), 10(1)(b), 10(2)(f), 12(a) and (b) and 13(a) and (b) implement Commission Implementing Decision (EU) 2015/749 repealing [Decision 2007/410/EC](#) on measures to prevent the introduction into and the spread within the Community of Potato spindle tuber viroid (OJ L 119, 12.5.2015, p.25) by removing the provisions inserted to implement [Decision 2007/410/EC](#). Those provisions had been inserted by [S.S.I. 2007/498](#) and article 14(a) revokes the relevant articles of [S.S.I. 2007/498](#).

### **Commission Implementing Decision (EU) 2015/789 and Commission Implementing Decision (EU) 2015/2417**

Article 3(d) introduces a defined term “plants specified in relation to *Xylella fastidiosa* (Wells et al.)” into article 2(1) of the principal Order to implement 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.), as amended by Commission Implementing Decision (EU) 2015/2417 (OJ L 125, 21.5.2015, p.36 and OJ L 333, 19.12.2015, p.143 respectively) (“the *Xylella* Decisions”). Article 3(b) also ensures that references to Commission Implementing Decision (EU) 2015/789 are construed as references to the instrument as amended from time to time in light of the evolving risks posed by this particular bacteria and the likelihood of further technical amendments to the *Xylella* Decisions to address them. Article 5(3) removes paragraph (3)(c) from article 22 of the principal Order (exceptions from certain prohibitions and requirements) with the effect of removing the exemption for certain plants remaining within infected zones, to be accompanied by a plant passport. The *Xylella* Decisions are also implemented by article 6 which inserts a new article 28A into the principal Order, imposing obligations on professional operators working with plants specified in relation to *Xylella fastidiosa* (Wells et al.) and by article 7 which creates an offence in relation to breach of the new article 28A (by amending article 45(1) of the principal Order). Article 8 amends the entry for *Xylella fastidiosa* (Wells et al.) in Schedule 1 to the principal Order (plant pests which shall not be landed in or spread within Scotland) in line with a change in terminology by the European Commission. Article 9(b) further implements the *Xylella* decisions by amending Schedule 3 to the principal Order to introduce a ban on imports of plants of *Coffea* from Costa Rica or Honduras and article 10(1)(d) substitutes for item 86 new items 86 and 87 into Part A of Schedule 4 to the principal Order with the effect of imposing special requirements on the landing of plants specified in relation to *Xylella fastidiosa* (Wells et al.) from third countries where the bacteria is not present and third countries where it is known to be present respectively. Article 10(2)(h) introduces landing and movement requirements in relation to plants specified in relation to *Xylella fastidiosa* (Wells et al.) which have been grown for at least part of their life in a demarcated area in another member State by substituting a new item 40 in Part B of Schedule 4 to the principal Order (relevant material, from another part of the European Union, which may only be landed in or moved within Scotland if special requirements are satisfied). The *Xylella* Decisions are further implemented by articles 12(c) and 13(c). Article 12(c) substitutes paragraph 12 in Part A of Schedule 6 to the principal Order (relevant material, from Scotland, or elsewhere in the European Union, which may only be landed in or moved within Scotland if accompanied by a plant passport) with the effect that a plant passport is required for the landing in or movement within Scotland of any plants specified in relation to *Xylella fastidiosa* (Wells et al.) which have been grown for part of their life in a demarcated area in another member State or any “host plants” regardless of where they were grown (“host plants” is defined by reference to the *Xylella* decisions). An exception is made where the host plants are landed or moved by a person for that person’s own use, rather than as part of that person’s trade, business or profession. Article 13(c) substitutes paragraph 12 in Part A of Schedule 7 to the principal Order (relevant material which may only be consigned to another part of the European Union if accompanied by a plant passport), with the effect that a plant passport is required for the movement from Scotland to another part of the European Union of plants specified in relation to *Xylella fastidiosa* (Wells et al.) which have been grown for part of their life in a demarcated area in a member State or “host plants” regardless of where they were grown. As in Schedule 6, an exception is made where the movement is made for personal use and not as part of a trade, business or profession.

### **Commission Implementing Decision (EU) 2015/893**

Article 3(b) inserts a defined term into article 2(1) of the principal Order in relation to Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky) (OJ L 146, 11.6.2015, p.16). The Decision is further implemented by article 10(1)(d) which inserts new item 88 into Part A of

*Status: This is the original version (as it was originally made).*

Schedule 4 to the principal order (in respect of imports from third countries where the harmful organism is known to be present) and by article 10(2)(h) which inserts item 41 into Part B of that Schedule to introduce landing and movement requirements in relation to imports of certain plants which have been grown or moved through demarcated areas in other member States. The Decision is also implemented by articles 12(c) and 13(c) which introduce paragraphs 13 into Schedules 6 and 7 to the principal Order respectively, with the effect that certain plants which originate in third countries where the beetle is known to be present or which have been grown or moved through a demarcated area in an EU member State require a plant passport to be landed in Scotland to be moved to another part of the EU.

### **Commission Implementing Decision (EU) 2015/1199**

Article 9(a) amends item 8 of Schedule 3 to the principal Order for the purpose of implementing Commission Implementing Decision (EU) 2015/1199 recognising Bosnia and Herzegovina as being free from *Clavibacter michiganensis* ssp. *sepedonicus* (Spieckerman and Kotthoff) Davis et al. Item 8 contains a prohibition on the introduction into Scotland of tubers of *Solanum tuberosum* L. from third countries, subject to certain exceptions. The amendment adds Bosnia and Herzegovina to the list of third countries excepted from the prohibition. There are other prohibitions relevant to imports of tubers and plants within the genus *Solanum* L at items 6 and 7 of Schedule 3 to the principal Order.

### **Commission Implementing Decision (EU) 2015/1849**

Article 9(b) implements Commission Implementing Decision (EU) 2015/1849 on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain vegetables originating in Ghana (OJ L 268, 15.10.2015, p.33) by introducing item 18 into Schedule 3 to the principal order, with the effect of prohibiting the import of certain plants originating in Ghana.

### **Spanish potatoes**

In light of the threat posed in relation to *Epitrix cucumeris* (Harris), *Epitrix similis* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner) by imports of Spanish potatoes, article 10(2)(e) substitutes item 19b in Part B of Schedule 4 to the principal Order to require that all Spanish potatoes originating outside a demarcated area must be washed prior to landing in Scotland. The provision does not apply to potatoes originating in the Balearic Islands, the Canary Islands, Ceuta or Melilla.

Potatoes originating in an area demarcated in relation to *Epitrix cucumeris* (Harris), *Epitrix similis* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner) require to satisfy the conditions set out in item 19 of Part B of Schedule 4, including the requirement that they are washed or brushed or similarly cleansed.

### **Commission Implementing Directive 2014/78/EU**

Article 10(1)(a) and (c) respectively insert items 7c and 85a into Part A of Schedule 4 to the principal Order in order to ensure full transposition of Commission Implementing Directive 2014/78/EU amending Annexes I, II, III, 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 (OJ L 183, 24.6.2014, p.23) (“the Implementing Directive”). The provisions transposed are points 11.4 and 18.1 in Annex IV, Part A, Section I of Council Directive 2000/29/EC (OJ L 169, 10.7.2000, p.1), these points having been substituted and inserted (respectively) by Article 1 of, and point (4) of the Annex to, the Implementing Directive. The other provisions of the Implementing Directive were transposed by S.S.I. 2015/10 and by S.I. 2014/2420.

The Order also makes a number of small amendments to the principal Order (and revocations of articles in other orders) in consequence of the amendments described above and it corrects some



typographical errors in the principal Order. Article 15 makes a minor amendment to the Plant Health (Scotland) Amendment Order 2015 ([S.S.I. 2015/10](#)) to correct a drafting error.

No business and regulatory impact assessment has been prepared for this Order as no impact upon business, charities or voluntary bodies is foreseen.