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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 111**

**PLANT HEALTH**

**The Potatoes Originating in Egypt (Scotland) Regulations 2004**

<i>Made</i>	- - - -	<i>10th March 2004</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>10th March 2004</i>
<i>Coming into force</i>	- -	<i>31st March 2004</i>

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Potatoes Originating in Egypt (Scotland) Regulations 2004 and shall come into force on 31st March 2004.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“the Decision” means Commission Decision [2004/4/EC](#) authorising Member States temporarily to take emergency measures against the dissemination of *Pseudomonas solanacearum* (Smith) Smith as regards Egypt<sup>(2)</sup>;

“inspector” means any person authorised by the Scottish Ministers to be an inspector for the purposes of the Order;

“the Order” means the Plant Health (Great Britain) Order 1993<sup>(3)</sup>;

“originating in Egypt” means grown in Egypt and “originated in Egypt” shall be construed accordingly;

“phytosanitary certificate” means a certificate duly completed either in the form set out in Schedule 14 to the Order or the equivalent written in a language other than English;

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(1) [1972 c. 68](#); section 2(2) was amended by the Scotland Act 1998 ([c. 46](#)), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(2) O.J. No. L 2 6.1.04, p.50.

(3) S.I.1993/1320; relevant amending instruments are [S.I.1995/1358](#), [1998/2245](#) and S.S.I 1999/22.

“potato” means any tuber or true seed of or any other plant of *Solanum tuberosum* L. or other tuber forming species or hybrid of the genus *Solanum* L.

(2) Unless the context otherwise requires, a reference in these Regulations to anything done in writing, including the service of a notice by virtue of regulation 5 below in exercise of a power conferred by article 22(1) or (2) of the Order, includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(4) which has been recorded and is consequently capable of being reproduced.

(3) In these Regulations, references to provisions in the Order shall be interpreted in accordance with article 2(1) of that Order.

### **Imports of potatoes originating in Egypt**

3.—(1) No person shall import into Scotland any potatoes which that person knows or has reasonable cause to suspect originated in Egypt, unless those potatoes are accompanied by a phytosanitary certificate issued in accordance with the requirements of paragraph 1 of the Annex to the Decision.

(2) The requirement imposed by point 25.8 of Section 1 of Part A of Schedule 4 to the Order (an official statement that potatoes originate in areas where *Ralstonia solanacearum* (Smith) Yabuuchi et al. is not known to occur) shall not apply to imports of potatoes originating in Egypt.

### **Approval of premises which process potatoes originating in Egypt**

4.—(1) Subject to paragraph (4), no person shall carry out in the course of business any treatment, including washing, of potatoes originating in Egypt other than in premises that the Scottish Ministers have approved in writing for that purpose.

(2) Applications for the approval required by paragraph (1) may be made in writing to the Scottish Ministers.

(3) The Scottish Ministers may suspend or revoke in writing any approval granted pursuant to paragraph (1).

(4) Paragraph (1) does not apply to the packing or preparation of potatoes in a shop, restaurant, canteen, club, public house, school, hospital or similar establishment (including a vehicle or a fixed or mobile stall) for delivery to the final consumer.

### **Powers of an inspector**

5.—(1) The provisions of this regulation are without prejudice to the circumstances in which an inspector may by virtue of the Order exercise the powers conferred by that Order.

(2) On having reasonable grounds for suspecting a contravention or likely contravention of regulation 3(1) above, an inspector may, for the purpose of these Regulations, exercise—

- (a) the powers conferred by article 22(1) of the Order as read with article 24(1) to (3) of the Order, as if a potato originating in Egypt was a plant landed or likely to be landed in contravention of the Order; and
- (b) the powers conferred by article 22(2) of the Order as read with article 24(1) to (3) of the Order, as if a potato originating in Egypt was a plant kept or moved in contravention of the Order.

(3) On having reasonable grounds for suspecting a contravention or likely contravention of regulation 4(1) above, an inspector may, for the purpose of these Regulations, exercise the powers

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(4) 2000 c. 7.

conferred by article 22(2) of the Order as read with article 24(1) to (3) of the Order, as if a potato originating in Egypt was a plant kept or moved in contravention of the Order.

(4) Any notice served by virtue of this regulation in exercise of a power conferred by article 22(1) or (2) of the Order shall have effect as if served under article 22(1) or (2) of the Order, and articles 24(4) to (6), 26 to 28, 32 and 33(1), (2) and (6) of the Order shall apply accordingly.

(5) An inspector may, for the purposes of checking compliance with these Regulations, exercise the powers conferred by article 25 of the Order, as if checking compliance with the Order.

(6) Any power conferred by article 25 of the Order which is exercised by virtue of this regulation shall be treated as if that power had been exercised under the Order, and articles 28 and 33(1)(a) and (c), (2) and (6) of the Order shall apply accordingly.

### **Charges in respect of the sampling of imports of potatoes**

6.—(1) Where the power to take samples conferred by article 25(1)(a) of the Order is exercised by an inspector in respect of potatoes originating in Egypt in order to ascertain whether, for the purpose of paragraph 3 of the Annex to the Decision, those potatoes are infected with *Ralstonia solanacearum* (Smith) Yabuuchi et al., there shall be payable to the Scottish Ministers by the importer a fee of £37.50, unless that power has previously been exercised for that purpose in respect of other potatoes from the same basin or sector during the same growing year.

(2) In this regulation—

“basin” and “sector” have the same meanings as they have in paragraph 1(a) of the Annex to the Decision; and

“growing year” means the period beginning on 1st September in one year and ending on 31st August in the following year.

### **Offences**

7.—(1) A person shall be guilty of an offence if, without reasonable excuse, proof of which shall lie on that person, they contravene or fail to comply with regulation 3(1) or 4(1) above.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Revocation**

8. The following Regulations are hereby revoked—

(a) the Potatoes Originating in Egypt (Scotland) Regulations 2001(5); and

(b) the Potatoes Originating in Egypt (Scotland) Amendment Regulations 2002 (6).

Pentland House, Edinburgh  
10th March 2004

*ALLAN WILSON*  
Authorised to sign by the Scottish Ministers

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(5) S.S.I. 2001/421.

(6) S.S.I. 2002/518.

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## EXPLANATORY NOTE

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

These Regulations, which extend to Scotland only, consolidate with amendments the Potatoes Originating in Egypt (Scotland) Regulations 2001 (“the 2001 Regulations”) and implement Commission Decision 2004/4/EC (“the Decision”) authorising Member States temporarily to take emergency measures against the dissemination of *Pseudomonas solanacearum* (Smith) Smith (now referred to as *Ralstonia solanacearum* (Smith) Yabuuchi et al.) as regards Egypt. The Decision permits potatoes originating in Egypt, other than seed potatoes, to be imported only if the measures laid down in the Decision are complied with. It consolidates and repeals Commission Decision 96/301/EC (as amended).

The Regulations—

- prohibit the import into Scotland of potatoes which the person importing knows or has reasonable cause to suspect originated in Egypt, unless those potatoes are accompanied by a phytosanitary certificate issued in accordance with the requirements of paragraph 1 of the Annex to the Decision (regulation 3);
- require potatoes originating in Egypt to be processed only in premises approved by the Scottish Ministers for that purpose (regulation 4);
- provide that an inspector, who has reasonable grounds for suspecting that regulation 3(1) or 4(1) of the Regulations has been or is likely to be contravened, may exercise certain enforcement powers conferred by article 22 of the Plant Health (Great Britain) Order 1993 (“the Order”) (regulation 5);
- provide that any notice served or power exercised under regulation 5 of the Regulations, where the power to do so is conferred by the Order, has the same effect as if served or exercised under the relevant article of the Order (regulation 5(4) and (6)). Accordingly, once a notice is served or other power is exercised under regulation 5 of the Regulations, the relevant consequential provisions of the Order, including provisions as to offences, take effect;
- permit an inspector to check that the provisions of the Regulations have been complied with by exercising certain powers conferred by article 25 of the Order (regulation 5(5));
- set a fee of £37.50, where a sample of potatoes is taken for the purpose of ascertaining whether the potatoes are infected with *Ralstonia solanacearum* (Smith) Yabuuchi et al. (regulation 6); and
- provide that a person who contravenes or fails to comply with regulation 3(1) (imports of potatoes originating in Egypt) or 4(1) (processing other than in approved premises) of the Regulations is liable on summary conviction to a fine not exceeding £5,000 (regulation 7).

The Regulations also revoke the 2001 Regulations, together with the specified amending instrument, in consequence of their consolidation in these Regulations (regulation 8).

No Regulatory Impact Assessment has been carried out in respect of these Regulations.