SCOTTISH STATUTORY INSTRUMENTS

2006 No. 319

PLANT HEALTH

The Plant Health (Potatoes) (Scotland) Order 2006

Made - - - - 7th June 2006
Laid before the Scottish Parliament - - - - 8th June 2006
Coming into force in accordance with articles 1 (1) and (2)

The Scottish Ministers, in exercise of the powers conferred by sections 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 of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Plant Health (Potatoes) (Scotland) Order 2006 and, subject to paragraph (2), shall come into force on 1st July 2006.

(2) Article 3 shall come into force on 1st January 2007.

(3) This Order extends to Scotland only.

Interpretation

2.—(1) In this Order–

"affected crop" means a notifiable crop where the number of growing plants affected by an aphid-borne virus is likely to exceed 4% of the total number of growing plants in the crop;

"affected waste potato material" means waste potato material affected by potato blight;

"aphid" means an insect from the family Aphididae;

"crop origin" means the country of origin and crop identification number of the crop of seed potatoes or crop identification number of the crop of seed potatoes from which the potatoes derived;

(**1**) 1967 c. 8; sections 2(1), 3(1) and (2) and 4(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 funct ions 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.

"inspector" means a person authorised by the Scottish Ministers for the purposes of the Plant Health (Scotland) Order 2005(**3**);

"notifiable crop" means a single crop of potatoes planted over an area of 0.1 hectare or more;

"potato" means any tuber or part thereof or any plant or part thereof of *Solanum tuberosum* L. or other tuber-forming species or hybrids of *Solanum* L.;

"potato blight" means *Phytophthora infestans* L.;

"potato grower" means any person who plants or intends to plant a notifiable crop;

"premises" includes any land, building, vehicle, vessel or container;

"waste potato material" means any part of a potato plant including tubers or part thereof or the haulm which has been discarded.

(2) In this Order–

(a) any reference to a numbered article is a reference to the article in this Order so numbered; and

(b) any reference to a numbered paragraph is a reference to the paragraph so numbered in the article or in which that reference occurs.

Notification of potatoes for planting

3.—(1) A potato grower who plants a notifiable crop within Scotland s hall within 28 days of the commencement of planting notify the Scottish Ministers in such form and manner as they may require of the matters specified in paragraph (2).

(2) The following matters shall be specified in a notification given under paragraph (1)–

(a) t he name of the potato grower;

(b) any trading or other business name used by the potato grower;

(c) the date that the crop was planted;

(d) the location of the crop;

(e) the crop area in hectares;

(f) the crop origin; and

(g) the variety of potatoes planted;

Inspection and control of potato crop health

4.—(1) An inspector may at any reasonable time enter on to any premises on which potatoes have been planted or on which that inspector reasonably believes potatoes have been planted and carry out such investigations as the inspector considers necessary for the purpose of establishing whether a crop of potatoes is–

(a) a notifiable crop that has not been notified to the Scottish Ministers in accordance with article 3; or

(b) an affected crop which poses a risk of infection by aphid-borne viruses to other potato crops.

(2) In acting under paragraph (1) an inspector may take and remove samples of potato, without payment, for the purposes of paragraph (1)(b) to confirm the existence of infection.

(3) Where an inspector is satisfied that a crop of potatoes is of a type referred to in paragraph (1) then the inspector may serve a notice requiring the potato grower to–

(**3**) S.S.I 2005/613.

(a) in the case of a notifiable crop, notify the Scottish Ministers within such period as is specified in the notice of the matters specified in article 3(2); and

(b) in the case of an affected crop, destroy the haulm of that crop within a period of 72 hours from the service or deemed service of the notice, and to take such other steps in such manner and within such time a s may be specified in the notice as appear to the inspector to be necessary to prevent the spread of infection of aphid-borne viruses to other potato crops.

Inspection and control of waste potato material

5.—(1) An inspector may at any reasonable time enter on to any premises for the purpose of identifying any area where waste potato material is kept and may carry out such inspection of any such area for the purpose of establishing the existence or otherwise of potato blight.

(2) A potato grower or occupier of the premises shall comply with a request by an inspector to identify where any waste potato material is kept.

(3) In acting under paragraph (1) or (2), an inspector may take and remove samples of waste potato material, without pa yment, for the purposes of confirming the existence of potato blight.

(4) Where an inspector is satisfied that an area identified under paragraph (1) or (2)–

(a) is affected by potato blight; and

(b) poses a risk of infection to other potato crops,

the inspector may serve a notice requiring the potato grower or occupier of the premises to take such steps, within 72 hours of service or deemed service of the notice, as are specified in the notice and are in the opinion of the inspector necessary to remove the risk specified in sub-paragraph (b).

Service of notices

6.—(1) Subject to paragraphs (2), (3) and (4), a notice under this Order may be given–

(a) in writing; or

(b) orally and shall as soon as practicable after the giving of such notice be confirmed in writing.

(2) Any written notice shall be served on any person–

(a) by personal delivery;

(b) by leaving it for that person at that person's last known place of abode or business; or

(c) by sending it through the post addressed to that person at that person's last known place of abode or business.

(3) Where a notice under either article 4(3) is to be served on a potato grower or under article 5(4) is to be served on a potato grower or occupier of premises on which affected waste potato material is kept, and the last known place of abode or business of that person cannot be ascertained after reasonable inquiry, the notice shall be deemed to be served seven days after it has been addressed to "the occupier" and affixed conspicuously to an object on the premises on which the affected crop is growing or on which affected waste potato material is kept.

(4) A notice served under this Order 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 person having the control or management of the partnership business at the address of the principal office of the partnership; or

(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 that partnership,

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be its principal office within the United Kingdom.

Information as to compliance with notices

7. A person on whom a notice has been served, or is deemed to have been served, under this Order must, if so required by an inspector, immediately inform the inspector whether the requirements of the notice have been complied with and, if they have been complied with, of the details of the steps taken in order to comply with those requirements.

Failure to comply with notices

8.—(1) Without prejudice to articles 6 and 7, if any person fails to comply with a notice served or deemed to be served on that person und er this Order then, without prejudice to any proceedings consequent upon such failure, an inspector may, after giving the potato grower or other person in control of the affected crop or affected waste potato material reasonable notice of the inspector ’s intention and upon production of the inspector’s authority, enter the premises where the affected crop or affected waste potato material is located and take such steps as appear necessary to the inspector to ensure compliance with the requirements of the notice.

(2) An inspector on entering premises under paragraph (1) may be accompanied by such persons and such equipment and vehicles as the inspector considers necessary for the purposes of facilitating the exercise of the inspector’s powers under that paragraph.

(3) Any person who accompanies an inspector on to premises on which an affected crop or affected waste potato material is located in accordance with paragraph (2) may remain on the premises and from time to time return to the premises with any equipment or v ehicles that person considers necessary, and carry out such work in such manner as the inspector may direct for the purpose of destroying or otherwise dealing with the affected crop or affected waste potato material.

(4) Where an inspector takes or directs any steps pursuant to paragraphs (1), (2) or (3), the Scottish Ministers may recover all reasonable costs of taking such steps as a debt from the person on whom notice was served.

Power to enter premises for the purpose of inspection

9.—(1) In the event that an inspector is refused entry to premises to carry out an inspection as required under articles 4 and 5 an inspector may apply to be granted a warrant by a sheriff or a justice of the peace to enter premises to carry out an inspection under articles 4 and 5.

(2) A sheriff or a justice of the peace may grant a warrant under paragraph (1) only if satisfied–

(a) that admission to any premises has been refused, or is likely to be refused, or that the case is one of urgency; and

(b) that there are reasonable grounds to allow entry for the purpose of articles 4 and 5 as the case may be.

(3) A warrant granted under paragraph (1) shall remain in force–

(a) for one month; or

(b) until the purpose for which the warrant is granted has been fulfilled,

whichever period is the shorter.

Offences

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

(a) that person contravenes or fails to comply with–

(i) article 3;

(ii) article 5 or

(iii) a provision or condition of a notice served, or deemed to be served, on that person under this Order; or

(b) that person intentionally obstructs an inspector or any person acting under the direction of an inspector in exercise of the powers given by or under this Order.

(2) Notwithstanding paragraph (1)(a)(i), a person shall be guilty of an offence if in relation to the notification information required under article 3, 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.

(3) 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 pr oceeded against and punished accordingly.

(4) For the purposes of paragraph (3), "director" in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(5) Where an offence under this Order is committed by a part nership 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.

(6) 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 proceeding s for the offence are taken against the first mentioned person.

(7) Section 136(3) of the Criminal Procedure (Scotland) Act 1995(**4**) (date of commencement of proceedings) shall apply for the purposes of this article as it applies for the purposes of that section.

Penalties

11. A person guilty of an offence under this Order shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Written and electronic communication

12.—(1) All notices and requests to which this Order applies shall be made or followed up in writing.

(**4**) 1995 c. 46.

(2) "Writing" in paragraph (1) shall include an electronic communication within the meaning of the Electronic Communications Act 2000(**5**) which has been recorded and is consequently capable of being reproduced provided that–

(a) any document of the type referred to in paragraph (1) shall only be sent to the Scottish Ministers by an electronic communication if the Scottish Ministers have represented that electronic communication is a means by whic h persons can send such a document to them; and

(b) notifications required to be made by the Scottish Ministers to any person shall only be made by an electronic communication if the intended recipient has used the same form of electronic communication in comm unicating with the Scottish Ministers for the purposes of this Order or has otherwise represented that the form of electronic communication to be used by the Scottish Ministers is a means by which the Scottish Ministers can communicate with them.

St Andrew's House,
Edinburgh
7th June 2006

ROSS FINNIE
A member of the Scottish Executive

(**5**) 2000 c. 7; the definition of "electronic communication" in section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.

EXPLANATORY NOTE

(This note is not part of the Order)

The Plant Health (Potatoes) (Scotland) Order 2006 ("this Order"), which extends to S cotland only, makes provision for the notification of potato crops and for the destruction of the haulm of infected crops and for the treatment of areas where waste potato material is kept. This Order comes into force on 1st July 2006 save for article 3 which comes into force on 1st January 2007.

Article 3 imposes requirements on potato growers who have planted a crop to notify the Scottish Ministers with a list of prescribed information to identify the location, size and variety of potato crop being grown.

Article 4 contains provisions for an inspection of a crop and requiring certain action to be carried out by the potato grower if the crop has not been notified or is affected by any aphid-borne virus.

Article 5 contains provisions for an inspection of waste potato material and requiring certain action to be carried out where waste potato material is affected by potato blight.

Articles 6 to 8 contain provisions as to issue of notices, compliance with notices and the consequences of failure to comply with notices.

Article 9 contains provisions entitling an inspector to apply for a warrant to enter onto premises where admission has been refused or is likely to be refused.

Article 10 contains offences for non-compliance with this Order. A person found guilty of an offence under this Order is liable on summary conviction to a fine of up to level 5 on the standard scale (Article 11).

Article 12 provides for the possible use of electronic communication.

No Regulatory Impact Assessment has been prepared in relation to this Order.