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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 206**

**PLANT HEALTH**

**The Plant Health (Scotland) Amendment Order 2010**

<i>Made</i>	- - - -	<i>19th May 2010</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>21st May 2010</i>
<i>Coming into force</i>	- -	<i>1st July 2010</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 section 2(2) of the European Communities Act 1972(3) and all other powers enabling them to do so.

This Order makes provision for preventing the spread of pests in Scotland and is called for by EU obligations in Council Directive 2007/33/EC on the control of potato cyst nematodes and repealing Directive 69/465/EEC(4).

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Plant Health (Scotland) Amendment Order 2010 and comes into force on 1st July 2010.

(2) This Order extends to Scotland only.

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

2. The Plant Health (Scotland) Order 2005(5) is amended in accordance with articles 3 to 11.

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- (1) 1967 c.8. Sections 2(1) and 3(1) were amended by the European Communities Act 1972 (c.68) (“the 1972 Act”), 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) (“the 1998 Act”).
- (2) 1972 c.62.
- (3) 1972 c.68. Section 2(2) was amended by the 1998 Act, Schedule 8, paragraph 15(3), the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and the European Union (Amendment) Act 2008 (c.7), Schedule 1(1), paragraph 1. The powers in section 2(2) of the 1972 Act are exercised as regards the whole or part of articles 4, 7(a) and 10 of, and paragraphs 9 and 10 of Schedule 15 to S.S.I. 2005/613 as substituted by Schedule 1 to, this instrument. The functions conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (4) O.J. L 156, 16.6.07, p.12.
- (5) S.S.I. 2005/613, amended by S.S.I. 2006/474, 2007/415 and 498, 2008/300 and 350 and 2009/153.

**Amendment of article 2 (general interpretation)**

3. In article 2(1) (general interpretation)—
- (a) after the definition of “Directive 2000/29/EC”, insert—  
““Directive 2007/33/EC” means Council Directive 2007/33/EC on the control of potato cyst nematodes and repealing Directive 69/465/EEC;” and
  - (b) after the definition of “responsible official body”, insert—  
““sampling unit” means an area of not less than 2 hectares, forming a field or part of a field with recognisable boundaries on at least two opposing sides;”.

**Amendment of Part 6 (measures to control the landing of relevant material and prevent the spread of plant pests)**

4. At Part 6 (measures to control the landing of relevant material and prevent the spread of plant pests), in the heading, before “PREVENT”, insert “SUPPRESS OR”.

**Amendment of Part 7 (planting of, and control of plant pests on, certain solanaceous species)**

5. At Part 7 (planting of, and control of plant pests on, certain solanaceous species), for the heading substitute “MEASURES TO CONTROL PLANT PESTS AFFECTING CERTAIN SOLANACEOUS SPECIES”.

**Insertion of article 38A (interpretation of Part 7)**

6. In Part 7 (planting of, and control of plant pests on, certain solanaceous species), before article 39 (miscellaneous provisions for certain solanaceous species), insert—

**“Interpretation of Part 7**

**38A.** In this Part, “holding” means all the agricultural land owned by one business that is situated within one parish, or, if the land is contiguous, in a neighbouring parish.”.

**Amendment of article 39 (miscellaneous provisions for certain solanaceous species)**

7. In article 39 (miscellaneous provisions for certain solanaceous species)—
- (a) in paragraph (6), before “control” insert “suppress or”; and
  - (b) after paragraph (7), insert—  
“(8) Subject to paragraph (10), seed potatoes and the plants listed in Schedule 15A must not be planted unless they were grown in a sampling unit which has undergone an official soil test carried out in accordance with paragraphs 1 to 6 of Schedule 15 and no Potato Cyst Nematode was found.  
(9) The official soil test referred to in paragraph (8) must be carried out either—
    - (a) in the period between the harvesting of the last crop in the sampling unit and the planting of the crop that requires the official soil test; or
    - (b) no more than four years prior to the planting of the crop that requires the official soil test, provided that evidence is available to show that no Potato Cyst Nematode was found and that potatoes or the plants listed in table A of Schedule 15A were not present at the time of the official soil test and have not been grown in the sampling unit since that official soil test.
  - (10) Paragraph (8) does not apply where—

- (a) seed potatoes and the plants listed in Schedule 15A are—
  - (i) planted on the same holding where they were harvested;
  - (ii) not grown in soil; or
  - (iii) harvested before 31st December 2010;
- (b) in the case of plants listed in table B of Schedule 15A, they have been washed or brushed until practically free of soil so that there is, to the satisfaction of an inspector, no identifiable risk of Potato Cyst Nematode spreading; or
- (c) in the case of plants listed in table B or C of Schedule 15A, official tests show that the sampling unit in which they were grown has been free of Potato Cyst Nematode for 12 years before they were planted, or there is evidence that no potatoes or plants listed in table A of Schedule 15A have been grown in that sampling unit in the previous 12 years.”.

**Amendment of article 45 (offences)**

8. In article 45 (offences), in paragraph (1)(a)(xiii), for “or (4)” substitute “, (4) or (8)”.

**Amendment of Schedule 2 (relevant material which may not be landed in or moved within Scotland if that material is carrying or infected with plant pests)**

9. 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), in Part B (plant pests known to occur in the European Community), in the section ‘Insects, mites and nematodes’, at item 7a, in column (2), omit “, intended for planting”.

**Schedule 15 (special measures for the control of Potato Cyst Nematode)**

10. For Schedule 15 (special measures for the control of Potato Cyst Nematode), substitute the Schedule set out in Schedule 1 to this Order.

**Insertion of Schedule 15A (species to which controls apply)**

11. After Schedule 15 (special measures for the control of Potato Cyst Nematode), insert Schedule 15A (species to which Potato Cyst Nematode controls apply) set out in Schedule 2 to this Order.

**Savings provision**

12. Notwithstanding articles 7 and 10, any licence granted under article 40 of the Plant Health (Scotland) Order 2005 permitting the growing of potatoes, not intended for the production of seed potatoes, of varieties resistant to Potato Cyst Nematode will remain in force until 31st December 2010 and will thereafter be revoked.

St Andrew’s House,  
Edinburgh  
19th May 2010

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

SCHEDULE 1

Article 10

“SCHEDULE 15

Article 39(6) and (8)

Special measures for the control of Potato Cyst Nematode

**Sampling and testing**

1. The official soil test referred to in article 39(8) must involve a soil sample with the standard sampling rate of at least 1500 ml of soil per hectare.
2. The standard sampling rate referred to in paragraph 1 may be reduced to the lower sampling rate of 400 ml of soil per hectare if—
  - (a) neither potatoes nor the plants listed in table A of Schedule 15A have been grown or been present in the sampling unit in the six years prior to the official soil test; or
  - (b) no Potato Cyst Nematode has been found during the last two successive official soil tests carried out at the standard sampling rate and no potatoes or plants listed in table A of Schedule 15A, other than those for which an official soil test is required, have been grown in the sampling unit after the first official soil test; or
  - (c) no Potato Cyst Nematode or dead cysts of Potato Cyst Nematode have been found in the most recent official soil test carried out at the standard sampling rate and no potatoes or plants listed in table A of Schedule 15A, other than those for which an official soil test is required, have been grown in the sampling unit since the last official soil test.
3. The results of other official tests carried out before 1st July 2010 may be considered as official soil tests as referred to in paragraph 2(b) and (c).
4. The standard and lower sampling rates referred to in paragraphs 1 and 2 may be further reduced as follows—
  - (a) in the case of the standard sampling rate, the first 8 hectares must be sampled at 1500 ml of soil per hectare, but may be reduced for each additional hectare to a minimum of 400 ml of soil per hectare; or
  - (b) in the case of the reduced sampling rate, the first 4 hectares must be sampled at 400 ml of soil per hectare, but may be further reduced for each additional hectare to a minimum of 200 ml of soil per hectare.
5. The use of the lower and reduced sampling rates referred to in paragraphs 2 and 4 may be continued in subsequent official soil tests until Potato Cyst Nematode is found in the sampling unit concerned.
6. The minimum size of the soil sample in all cases is 100 ml of soil per sampling unit.

**Control Measures**

7. Following the official soil test referred to in article 39(8), an inspector must—
  - (a) serve a notice on the occupier or other person in charge of the premises officially recording that the sampling unit is infested with Potato Cyst Nematode; or
  - (b) officially record that no Potato Cyst Nematode was found in the sampling unit.
8. Subject to paragraph 9, a notice under paragraph 7(a) officially recording that the sampling unit is infested with Potato Cyst Nematode must contain the following restrictions—
  - (a) no potatoes may be planted in the sampling unit;

- (b) no plants listed in table A of Schedule 15A, intended for replanting, may be planted or stored in the sampling unit;
- (c) no plants listed in table B of Schedule 15A, intended for replanting, may be planted in the sampling unit unless they are to be washed or brushed until practically free of soil so that there is, to the satisfaction of an inspector, no identifiable risk of Potato Cyst Nematode spreading; and
- (d) no plants listed in table C of Schedule 15A may be planted in the sampling unit.

**9.** In the case of sampling units that are officially recorded as infested with Potato Cyst Nematode, the planting of potatoes, not intended for the production of seed potatoes, may be authorised by an inspector by a notice in writing served on the occupier or other person in charge of the premises.

**10.** Any notice served under paragraph 9 must be in accordance with the terms of the official control programme aimed at the suppression of Potato Cyst Nematode notified to the European Commission in accordance with Article 9(2) of Directive 2007/33/EC and published by Science and Advice for Scottish Agriculture, Edinburgh in May 2010.

**11.** If any potatoes, or any of the plants listed in Schedule 15A, have been grown or stored in a sampling unit that is subsequently officially recorded as infested with Potato Cyst Nematode, or have been in contact with soil in which Potato Cyst Nematode has been found—

- (a) in the case of seed potatoes and the plants listed in table A of Schedule 15A, these must not be planted unless they have been disinfested to the satisfaction of an inspector so that there is no risk of Potato Cyst Nematode spreading;
- (b) in the case of plants listed in table B of Schedule 15A, these must not be planted unless they have been washed or brushed until practically free of soil so that there is no identifiable risk of Potato Cyst Nematode spreading; and
- (c) in the case of plants listed in table C of Schedule 15A, these must not be planted.

**12.** A notice under paragraph 7(a) or 9 may be revoked if, following a further official soil test, no Potato Cyst Nematode is found in the sampling unit after at least 6 years from—

- (a) the date of the last official soil test confirming the presence of Potato Cyst Nematode; or
- (b) the harvesting of the last potato crop in the sampling unit.”

SCHEDULE 2

Article 11

“SCHEDULE 15A

Article 39(8), (9)(b) and (10)

Species to which controls apply

**Table A**

Host plants with roots:	<i>Capsicum</i> spp.,
	<i>Lycopersicon lycopersicum</i> (L.) Karsten ex Farw.,
	<i>Solanum melongena</i> L.

**Table B**

Other plants with roots:	<i>Allium porrum</i> L.,
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**Status:** This is the original version (as it was originally made).

	<i>Beta vulgaris</i> L.,
	<i>Brassica</i> spp.,
	<i>Fragaria</i> L.,
	<i>Asparagus officinalis</i> L.

**Table C**

Bulbs, tubers and rhizomes, not washed or brushed until practically free of soil so that there is no identifiable risk of Potato Cyst Nematode spreading, grown in soil and intended for planting, other than those for which there shall be evidence by their packaging or by other means that they are intended for sale to final consumers not involved in professional plant or cut flower production:	<i>Allium ascalonicum</i> L.,
	<i>Allium cepa</i> L.,
	<i>Dahlia</i> spp.,
	<i>Gladiolus</i> Tourn. Ex L.,
	<i>Hyacinthus</i> spp.,
	<i>Iris</i> spp.,
	<i>Lilium</i> spp.,
	<i>Narcissus</i> L.,
	<i>Tulipa</i> L.”

## 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 Council Directive 2007/33/EC of 11th June 2007 on the control of potato cyst nematodes and repealing Directive 69/465/EEC (O.J. L 156, 16.6.2007, p.12).

Article 7 makes various amendments to article 39 of the principal Order so as to prevent the planting of seed potatoes and the plants listed in the new Schedule 15A, unless an official soil test has found that the area in which they were grown was not infested with Potato Cyst Nematode.

The official soil test is to be carried out in accordance with the procedures that are now set out in Schedule 15 (articles 7 and 10 and Schedule 1) and must be carried out either—

- (a) in the period between the harvesting of the last crop in the sampling unit and the planting of the crop that requires the test; or
- (b) no more than four years prior to the planting of the crop that requires the test, provided that evidence is available to show that the potatoes or the plants listed in table A of Schedule 15A were not present at the time of the test and have not been grown in the sampling unit since that test.

Article 7 also amends article 39 of the principal Order to set out 5 categories which are to be exempt from the soil test requirement. The exemptions apply to—

- (a) seed potatoes and the plants listed in Schedule 15A which are—

- (i) planted on the same holding where they were produced;
  - (ii) not grown in soil; or
  - (iii) produced before 31st December 2010;
- (b) plants listed in table B of Schedule 15A if they are washed or brushed until practically free of soil so that there is, to the satisfaction of an inspector, no identifiable risk of Potato Cyst Nematode spreading; or
- (c) plants listed in tables B and C of Schedule 15A if official tests show that the sampling unit has been free of Potato Cyst Nematode for 12 years before they were planted, or there is evidence that no potatoes or plants listed in table A of Schedule 15A have been grown in that sampling unit in the previous 12 years.

Article 8 adds article 39(8) to the offence provision in article 45(1) of the principal Order.

Article 9 makes a minor correction to Part B of Schedule 2.

Schedule 15 of the principal Order is replaced to set out the sampling and testing requirements and to introduce new measures for the control of Potato Cyst Nematode (article 10 and Schedule 1). This Schedule also provides that, in infested areas, the planting of potatoes, not intended for the production of seed potatoes, may be authorised in accordance with the official control programme for the suppression of Potato Cyst Nematode (paragraphs 9 and 10 of Schedule 15 as substituted by Schedule 1). Copies of the official control programme and full details of parish boundaries can be obtained from Scottish Government Rural Payments and Inspections Directorate (SGRPID) Area Offices and from [www.scotland.gov.uk/potatocystnematode](http://www.scotland.gov.uk/potatocystnematode).

A new Schedule 15A is inserted which lists the species to which the new controls apply (article 11 and Schedule 2).

Licences served under article 40 of the principal Order in accordance with Schedule 15, in the form as it was prior to amendment by this Order, permitting the growing of potatoes not intended for the production of seed potatoes will remain in force through the 2010 growing season (article 12).

A Regulatory Impact Assessment has been prepared for this instrument. Copies are available from Science and Advice for Scottish Agriculture (SASA), Roddinglaw Road, Edinburgh, EH12 9FJ and at [www.scotland.gov.uk/potatocystnematode](http://www.scotland.gov.uk/potatocystnematode).