
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.

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

Status: *This is the original version (as it was originally made).*

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.