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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 99**

**PLANT HEALTH**

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

<i>Made</i>	- - - -	<i>11th March 2010</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>12th March 2010</i>
<i>Coming into force</i>	- -	<i>29th March 2010</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 3(1) to (4) and 4(1) of the Plant Health Act 1967(1), as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972(2), and all other powers enabling them to do so.

**Citation and commencement**

1. This Order may be cited as the Plant Health (Potatoes) (Scotland) Amendment Order 2010 and comes into force on 29th March 2010.

**Amendment of the Plant Health (Potatoes) (Scotland) Order 2006**

2. The Plant Health (Potatoes) (Scotland) Order 2006(3) is amended in accordance with articles 3 to 9.

**Amendment of article 4**

3. In article 4 (inspection and control of potato crop health) for paragraph (2) substitute—  
“(2) An inspector may take and remove samples of potato to confirm the existence or otherwise of infection for the purposes of paragraph (1)(b).”.

**Insertion of new article 4A**

4. After article 4 (inspection and control of potato crop health) insert—

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(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 functions 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.

(3) S.S.I. 2006/319.

**“Inspection and control of potato crop health *Dickeya* spp.**

**4A.**—(1) An inspector may at any reasonable time enter on to any premises on which the inspector reasonably believes that potatoes have been planted, stored, processed or packed and carry out such investigations as the inspector considers necessary for the purpose of establishing whether any potatoes are infected with *Dickeya* spp..

(2) An inspector may take and remove samples of potato or soil for the purpose of establishing whether any potatoes are infected with *Dickeya* spp..

(3) Where an inspector reasonably suspects that potatoes are infected with *Dickeya* spp. the inspector may serve a notice requiring the potato grower or occupier of the premises to take such steps, in such manner and within such time as may be specified in the notice, as appear to the inspector to be necessary to prevent the spread of *Dickeya* spp. to other potatoes.”.

**Amendment of article 5**

**5.** In article 5 (inspection and control of waste potato material) for paragraph (3) substitute—

“(3) An inspector may take and remove samples of waste potato material for the purpose of confirming the existence or otherwise of potato blight.”.

**Amendment of article 6**

**6.** In article 6 (service of notices)—

(a) for paragraph (1) substitute—

“(1) A notice under this Order may be given—

(a) in writing; or

(b) orally,

and shall if given orally be confirmed in writing as soon as practicable.”; and

(b) for paragraph (3) substitute—

“(3) Where a notice is to be served on—

(a) a potato grower under article 4(3); or

(b) a potato grower or occupier of premises under article 4A(3) or 5(4),

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 crop is growing or on which the potato, soil or waste material is or has been kept.”.

**Amendment of article 8**

**7.** In article 8 (failure to comply with notices)—

(a) for paragraph (1) substitute—

“(1) If any person fails to comply with a notice served or deemed to be served on that person under this Order then, without prejudice to any proceedings consequent upon such failure, an inspector may, after giving the potato grower or occupier of the premises reasonable notice of the inspector’s intention and upon production of the inspector’s authority, enter the premises where the crop, potatoes, soil or waste material is located, or where documents or records pertaining to the crop, potatoes, soil or waste material are

located, and take such steps as appear necessary to the inspector to ensure compliance with the requirements of the notice.

(1A) If it appears necessary to the inspector to inspect any document or record kept by means of a computer, then an inspector may have access to, inspect and check the operation of, any computer and any associated apparatus or material which is or is reasonably suspected to have been in use in connection with the record or document.”;

- (b) in paragraph (2) after “that paragraph” insert “or paragraph (1A).”;
- (c) in paragraph (3), for “affected crop or affected waste potato material” in both places where those words occur substitute “crop, potatoes, soil or waste material”; and
- (d) in paragraph (4), for “paragraphs (1), (2) or (3)” substitute “paragraph (1), (1A), (2) or (3)”.

#### **Amendment of article 9**

**8.** In article 9 (power to enter premises for the purpose of inspection)—

- (a) for the heading substitute “Entry to dwellinghouses”;
- (b) for paragraph (1) substitute—

“(1) The power to enter premises conferred by articles 4(1), 4A(1), 5(1) and 8(1) may be exercised by an inspector to enter premises used wholly or mainly as a dwelling only if the inspector has been granted a warrant by a sheriff or a justice of the peace.”;

- (c) in paragraph (2)(a) after “urgency” insert “, or that a request for admission might prejudice the purpose of the entry”; and
- (d) in paragraph (2)(b) for “4 and 5” substitute “4(1), 4A(1), 5(1) or 8(1)”.

#### **Amendment of article 10**

**9.** In article 10 (offences)—

- (a) in paragraph (1)(a)(ii) for “article 5” substitute “article 5(2)”; and
- (b) omit paragraph (7).

St Andrew’s House,  
Edinburgh  
11th March 2010

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

This Order amends the Plant Health (Potatoes) (Scotland) Order 2006 (“the principal Order”) to make provision for preventing the spread of *Dickeya* spp. in potato crops.

Article 3 inserts a new article 4(2) into the principal Order which does not make reference to payment for samples.

Article 4 inserts a new article 4A into the principal Order, containing provisions for the inspection of potatoes for the presence of *Dickeya* spp. and, if infection is suspected or identified, for requiring action to be taken by the person responsible for the potatoes or the premises on which they have been planted, stored, processed or packed.

Article 5 inserts a new article 5(3) into the principal Order which does not make reference to payment for samples.

Article 6(a) clarifies the method for giving notice in article 6(1) of the principal Order. Article 6(b) amends article 6(3) of the principal Order to cover notices served under the new paragraph 4A.

Article 7(a) inserts a new paragraph (1) into article 8 of the principal Order. Where a person has failed to comply with a notice the inspector may enter premises where potatoes, soil or waste material or relevant documents are located and take such steps as the inspector considers necessary to ensure compliance with the notice. A new paragraph (1A) is also inserted into article 8 of the principal Order to enable an inspector enforcing a notice to access any computer on which relevant documents or records are stored.

Article 8 amends article 9 of the principal Order by providing that a warrant to enter premises is only required in relation to a dwelling, and that the possibility of prejudice being caused by a request for admission may provide grounds for granting such a warrant.

Article 9(a) amends article 10(1)(a)(ii) of the principal Order to clarify the offence in relation to article 5. Article 9(b) omits article 10(7) of the principal Order.

This Order also makes minor drafting changes to the principal Order.

No Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business.