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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2019 No.**

**The Plant Health (EU Exit) (Scotland)  
(Amendment etc.) Regulations 2019**

**PART 2**

Miscellaneous provision

**Amendment of the Plant Health (Scotland) Order 2005**

2. The Plant Health (Scotland) Order 2005(1) is amended in accordance with regulations 3 to 15.
3. In article 2(1) (general interpretation)—
  - (a) for the definition of “Directive 98/57/EC” substitute—

““Directive 98/57/EC” means Council Directive 98/57/EC on the control of *Ralstonia solanacearum* (Smith) Yabuuchi *et al.*(2), as last amended by Commission Directive 2006/63/EC(3);”
  - (b) after the definition of “official statement” insert—

““*Phytophthora ramorum*” means *Phytophthora ramorum* Werres, De Cock & Man in’t Veld sp. nov.;;”
  - (c) for the definition of “Potato Cyst Nematode” substitute—

““Potato Cyst Nematode means” means any cyst-forming nematode of the species *Globodera pallida* Stone Behrens or *Globodera rostochiensis* (Wollenweber) Behrens that infests and multiplies on potatoes or virulents group or pathotypes of such nematode;”
  - (d) after the definition of “third country” omit “and”, and
  - (e) after the definition of “USA” insert—

“and  
“ware potato” means a potato, other than a seed potato”.
4. After article 31, insert—

**“Duty to perform official surveys (*Phytophthora ramorum*).**

**31A.** An inspector must perform an official survey for *Phytophthora ramorum*, including of both cultivated plants and uncultivated, or unmanaged, plants, to determine whether there is evidence of infestation by *Phytophthora ramorum*.”
5. In article 39 (Miscellaneous provisions for certain solanaceous species)—

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(1) S.S.I. 2005/613, as last amended by S.S.I. 2018/283. The Order is further amended by Part 3 of these Regulations.  
(2) OJ L 235, 21.8.1998, p.1.  
(3) OJ L 206, 27.7.2006, p.36.

- (a) in paragraph (6) omit “Part A of”,
- (b) omit paragraph (7),
- (c) in paragraph (9)—
  - (i) in the words before sub-paragraph (a), omit “either”, and
  - (ii) after sub-paragraph (a), for “or” substitute “and”,
- (d) in paragraph (10)—
  - (i) at the end of sub-paragraph (a)(i), insert “or”,
  - (ii) at the end of sub-paragraph (a)(ii) omit “or”,
  - (iii) omit paragraph (a)(iii),
- (e) in paragraph (11), for—
  - (i) “an inspector may” substitute “an inspector must”, and
  - (ii) “for the purposes of” substitute “in accordance with”.

6. In schedule 1 (Plant pests which shall not be landed in or spread within Scotland)(4), in Part B (Plant pests known to occur in the European Union), under the heading “**Fungi**” after item 2, insert—

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“2a. *Phytophthora ramorum*”.

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7.—(1) In schedule 4 (Restrictions on the landing in and movement within Scotland of relevant material)(5), in Part A (relevant material, from third countries, which may only be landed in Scotland if special requirements are satisfied), after item 3 insert—

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<p>“3a. Plants, other than fruit and seeds, of the following genera and species originating in the USA—</p> <p><i>Acer macrophyllum</i> Pursh, <i>Acer pseudoplatanus</i> L., <i>Adiantum aleuticum</i> (Rupr.) Paris,</p> <p><i>Adiantum jordanii</i> C. Muell., <i>Aesculus californica</i> (Spach) Nutt.,</p> <p><i>Aesculus hippocastanum</i> L., <i>Arbutus menziesii</i> Pursch., <i>Arbutus unedo</i> L., <i>Arctostaphylos</i> spp. Adans., <i>Calluna vulgaris</i> (L.) Hull, <i>Camellia</i> spp. L.,</p> <p><i>Castanea sativa</i> Mill.,</p> <p><i>Fagus sylvatica</i> L., <i>Frangula californica</i> (Eschsch.) Gray, <i>Frangula purshiana</i> (DC.) Cooper,</p> <p><i>Fraxinus excelsior</i> L., <i>Griselinia littoralis</i> (Raoul), <i>Hamamelis virginiana</i> L., <i>Heteromeles arbutifolia</i> (Lindley) M. Roemer,</p> <p><i>Kalmia latifolia</i> L., <i>Laurus nobilis</i> L.,</p>	<p>The plants must be accompanied by an official statement:</p> <ul style="list-style-type: none"> <li>(a) either—           <ul style="list-style-type: none"> <li>(i) under the heading “Additional declaration” that the material originates in an area recognised by the official plant health service of the country from which the material originates (“the relevant plant health service”) as being free from non-European isolates of <i>Phytophthora ramorum</i>, in which case the name of the area from where the material originates must be specified under the heading “place of origin”; or</li> <li>(ii) that the phytosanitary certificate was issued only after official verification by the relevant plant health service that no signs of non-European</li> </ul> </li> </ul>
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(4) Schedule 1 is substituted by Part 3 of these Regulations.

(5) Schedule 4 is substituted by Part 3 of these Regulations.

*Leucothoe* spp. D. Don, *Lithocarpus densiflorus* (Hook. & Arn.) Rehd., *Lonicera hispidula* (Lindl.) Dougl. ex Torr.&Gray, *Magnolia* spp. L.,

*Michelia doltsopa* Buch.-Ham. ex DC,

*Nothofagus obliqua* (Mirbel) Blume,

*Osmanthus heterophyllus* (G. Don) P. S. Green,

*Parrotia persica* (DC) C.A. Meyer,

*Photinia x fraseri* Dress, *Pieris* spp. D. Don, *Pseudotsuga menziesii* (Mirbel) Franco,

*Quercus* spp. L., *Rhododendron* spp. L., other than *Rhododendron simsii* Planch.,

*Rosa gymnocarpa* Nutt.,

*Salix caprea* L.,

*Sequoia sempervirens* (Lamb. ex D. Don) Endl., *Syringa vulgaris* L.,

*Taxus* spp. L.,

*Trientalis latifolia* (Hook), *Umbellularia californica* (Hook. & Arn.) Nutt., *Vaccinium ovatum* Pursh and *Viburnum* spp. L. (for the purposes of column 3 of this item, “susceptible material”)

isolates of *Phytophthora ramorum* have been observed on any susceptible material, (except fruit and seeds), at the place of production during official inspections, including during laboratory testing of any suspicious symptoms carried out since the beginning of the last complete cycle of vegetation, and

- (b) the phytosanitary certificate must be issued only after representative samples of the plants have been taken before shipment, and have been tested and found free from non-European isolates of *Phytophthora ramorum* in these tests, in which case the phytosanitary certificate must be endorsed by the relevant plant health service under the heading “additional declaration” with the statement “tested and found free from non-European isolates of *Phytophthora ramorum* Werres, De Cock & Man in’t Veld sp. nov.”.”

(2) In schedule 4, in Part B (Relevant material, from another part of the European Union, which may only be landed in or moved within Scotland if special requirements are satisfied), after item 41 insert—

- “42. Plants, other than seeds, of *Viburnum* spp. L, *Camellia* spp. or *Rhododendron* spp. L., other than *Rhododendron simsii* Planch, intended for planting (for the purposes of column 3, “susceptible material”).
- The plants must be accompanied by an official statement either that:
- (a) they originate in areas in which *Phytophthora ramorum* is known not to occur,
- (b) upon official inspection at the place of production, carried out at least twice at an appropriate time when the susceptible material is in active growth, or upon laboratory testing of apparent symptoms of *Phytophthora ramorum*,

- no signs of *Phytophthora ramorum* have been found on the material during the last complete cycle of vegetation, or
- (c) where signs of *Phytophthora ramorum* have been found on the susceptible material at the place of production, appropriate procedures aimed at eradicating *Phytophthora ramorum* have been implemented which include at least the following measures:
- (i) the destruction of susceptible material found to be infected by *Phytophthora ramorum* (“infected material”) and any other susceptible material, including associated growing media and plant debris, within a radius of two metres of the infected material,
  - (ii) susceptible material within a radius of ten metres of the infected material and all other susceptible material from the same lot as the infected material have been retained at the place of production and, in the three months following the finding of infection referred to in sub-paragraph (i), have not been subject to any treatments that may suppress symptoms of *Phytophthora ramorum* and have been found free from *Phytophthora ramorum* after additional inspections carried out at least twice,
  - (iii) all other susceptible material at the place of production has been inspected frequently following the finding of infection referred to in sub-paragraph (i) and found on such inspection to be free from *Phytophthora ramorum*, and
  - (iv) appropriate phytosanitary measures have been taken within a radius of two metres from where infected plants have been standing.”.

8. In schedule 5 (Relevant material from a third country for which a phytosanitary certificate may be required)(6), in Part A (relevant material which may only be landed in Scotland if accompanied by a phytosanitary certificate), after paragraph 9 insert—

“10. Plants of *Acer macrophyllum* Pursh, *Acer pseudoplatanus* L., *Adiantum aleuticum* (Rupr.) Paris, *Adiantum jordanii* C. Muell., *Aesculus californica* (Spach) Nutt., *Aesculus hippocastanum* L., *Arbutus menziesii* Pursch., *Arbutus unedo* L., *Arctostaphylos* spp. Adans, *Calluna vulgaris* (L.) Hull, *Camellia* spp. L., *Castanea sativa* Mill., *Fagus sylvatica* L., *Frangula californica* (Eschsch.) Gray, *Frangula purshiana* (DC.) Cooper, *Fraxinus excelsior* L., *Griselinia littoralis* (Raoul), *Hamamelis virginiana* L., *Heteromeles arbutifolia* (Lindley) M. Roemer, *Kalmia latifolia* L., *Laurus nobilis* L., *Leucothoe* spp. D. Don, *Lithocarpus densiflorus* (Hook. & Arn.) Rehd., *Lonicera hispidula* (Lindl.) Dougl. ex Torr.&Gray, *Magnolia* spp. L., *Michelia doltsopa* Buch.-Ham. ex DC, *Nothofagus obliqua* (Mirbel) Blume, *Osmanthus heterophyllus* (G. Don) P. S. Green, *Parrotia persica* (DC) C.A. Meyer, *Photinia x fraseri* Dress, *Pieris* spp. D. Don, *Pseudotsuga menziesii* (Mirbel) Franco, *Quercus* spp. L., *Rhododendron* spp. L., other than *Rhododendron simsii* Planch., *Rosa gymnocarpa* Nutt., *Salix caprea* L., *Sequoia sempervirens* (Lamb. ex D. Don) Endl., *Syringa vulgaris* L., *Taxus* spp. L., *Trientalis latifolia* (Hook), *Umbellularia californica* (Hook. & Arn.) Nutt., *Vaccinium ovatum* Pursh and *Viburnum* spp. L., originating in the USA.”.

9. In schedule 6 (Prohibitions on landing in and movement within Scotland of relevant material without a plant passport)(7), in Part A (Relevant material, from Scotland or elsewhere in the European Union, which may only be landed in or moved within Scotland if accompanied by a plant passport), after paragraph 13 insert—

“14. Plants of *Acer macrophyllum* Pursh, *Acer pseudoplatanus* L., *Adiantum aleuticum* (Rupr.) Paris, *Adiantum jordanii* C. Muell., *Aesculus californica* (Spach) Nutt., *Aesculus hippocastanum* L., *Arbutus menziesii* Pursch., *Arbutus unedo* L., *Arctostaphylos* spp. Adans, *Calluna vulgaris* (L.) Hull, *Camellia* spp. L., *Castanea sativa* Mill., *Fagus sylvatica* L., *Frangula californica* (Eschsch.) Gray, *Frangula purshiana* (DC.) Cooper, *Fraxinus excelsior* L., *Griselinia littoralis* (Raoul), *Hamamelis virginiana* L., *Heteromeles arbutifolia* (Lindley) M. Roemer, *Kalmia latifolia* L., *Laurus nobilis* L., *Leucothoe* spp. D. Don, *Lithocarpus densiflorus* (Hook. & Arn.) Rehd., *Lonicera hispidula* (Lindl.) Dougl. ex Torr.&Gray, *Magnolia* spp. L., *Michelia doltsopa* Buch.-Ham. ex DC, *Nothofagus obliqua* (Mirbel) Blume, *Osmanthus heterophyllus* (G. Don) P. S. Green, *Parrotia persica* (DC) C.A. Meyer, *Photinia x fraseri* Dress, *Pieris* spp. D. Don, *Pseudotsuga menziesii* (Mirbel) Franco, *Quercus* spp. L., *Rhododendron* spp. L., other than *Rhododendron simsii* Planch., *Rosa gymnocarpa* Nutt., *Salix caprea* L., *Sequoia sempervirens* (Lamb. ex D. Don) Endl., *Syringa vulgaris* L., *Taxus* spp. L., *Trientalis latifolia* (Hook), *Umbellularia californica* (Hook. & Arn.) Nutt., *Vaccinium ovatum* Pursh and *Viburnum* spp. L., originating in the USA.

15. Plants, other than seeds, intended for planting, of *Camellia* spp., *Rhododendron* spp. L., other than *Rhododendron simsii* Planch., and *Viburnum* spp. originating in any third country, other than the USA, or in the European Union.”.

10. In schedule 7 (Prohibitions on the consignment of relevant material to another part of the European Union without a plant passport)(8), in Part A (Relevant material which may only be consigned to another part of the European Union if accompanied by a plant passport), after paragraph 13 insert—

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(6) Schedule 5 is substituted by Part 3.

(7) Schedule 6 is substituted by Part 3.

(8) Schedule 7 is substituted by Part 3 of these Regulations.

“14. Plants of *Acer macrophyllum* Pursh, *Acer pseudoplatanus* L., *Adiantum aleuticum* (Rupr.) Paris, *Adiantum jordanii* C. Muell., *Aesculus californica* (Spach) Nutt., *Aesculus hippocastanum* L., *Arbutus menziesii* Pursch., *Arbutus unedo* L., *Arctostaphylos* spp. Adans, *Calluna vulgaris* (L.) Hull, *Camellia* spp. L., *Castanea sativa* Mill., *Fagus sylvatica* L., *Frangula californica* (Eschsch.) Gray, *Frangula purshiana* (DC.) Cooper, *Fraxinus excelsior* L., *Griselinia littoralis* (Raoul), *Hamamelis virginiana* L., *Heteromeles arbutifolia* (Lindley) M. Roemer, *Kalmia latifolia* L., *Laurus nobilis* L., *Leucothoe* spp. D. Don, *Lithocarpus densiflorus* (Hook. & Arn.) Rehd., *Lonicera hispidula* (Lindl.) Dougl. ex Torr.&Gray, *Magnolia* spp. L., *Michelia doltsopa* Buch.-Ham. ex DC, *Nothofagus obliqua* (Mirbel) Blume, *Osmanthus heterophyllus* (G. Don) P. S. Green, *Parrotia persica* (DC) C.A. Meyer, *Photinia x fraseri* Dress, *Pieris* spp. D. Don, *Pseudotsuga menziesii* (Mirbel) Franco, *Quercus* spp. L., *Rhododendron* spp. L., other than *Rhododendron simsii* Planch., *Rosa gymnocarpa* Nutt., *Salix caprea* L., *Sequoia sempervirens* (Lamb. ex D. Don) Endl., *Syringa vulgaris* L., *Taxus* spp. L., *Trientalis latifolia* (Hook), *Umbellularia californica* (Hook. & Arn.) Nutt., *Vaccinium ovatum* Pursh and *Viburnum* spp. L., originating in the USA.

15. Plants, other than seeds, intended for planting, of *Camellia* spp., *Rhododendron* spp., other than *Rhododendron simsii* Planch, and *Viburnum* spp. originating in any third country, other than the USA, or in the European Union.”

11. In schedule 8 (Swiss plant passports)(9), in Part A (Relevant material originating in Switzerland which may be landed in or moved within Scotland if accompanied by a Swiss plant passport), after paragraph 4A, insert—

“4B. Plants, other than seeds, intended for planting, of *Camellia* spp., *Rhododendron* spp., other than *Rhododendron simsii* Planch, and *Viburnum* spp.”

12. In schedule 14 (Special measures for the control of Potato Wart Disease)—

- (a) in paragraph 1, after “*Synchytrium endobioticum* (Schilb.) Perc.” insert “(for the remainder of this schedule referred to as “*Synchytrium endobioticum*)”, and
- (b) in paragraph 3, for “may” substitute “must”.

13. In schedule 15(10) (Special measures for the control of Potato Cyst Nematode)—

- (a) after paragraph 10 insert—

“10A. An inspector must by notice in writing designate as contaminated any potatoes or plants listed in schedule 15A which—

- (a) have come from a sampling unit officially recorded under paragraph 7 as infested with Potato Cyst Nematode; or
- (b) have come into contact with soil in which Potato Cyst Nematode was found.”,

- (b) in paragraph 11—

- (i) for the words before sub-paragraph (a) substitute “Where any potatoes or plants listed in Schedule 15A have been designated as contaminated under paragraph 10A”,
- (ii) at the end of sub-paragraph (b) omit “and”,
- (iii) after sub-paragraph (c) omit the full stop and insert—  
“and

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(9) Schedule 8 is substituted by Part 3 of these Regulations.

(10) Schedule 15 is substituted by Part 3 of these Regulations.

- (d) in the case of potatoes intended for industrial processing or grading, these must not be moved except in accordance with an authorisation given under paragraph 11A.”,
- (c) after paragraph 11, insert—
  - “**11A.** An inspector may authorise the movement of potatoes designated as contaminated under paragraph 10A for the purposes of industrial processing or grading providing that such authorisation—
    - (a) is given by notice in writing; and
    - (b) requires the potatoes to be delivered to a processing or grading plant that has appropriate and officially approved waste disposal procedures that ensure that there is no risk of Potato Cyst Nematode spreading.”, and
- (d) after paragraph 12, insert—

#### “Further investigations

- 13.** If any suspected occurrence or confirmed presence of Potato Cyst Nematode in Scotland results from a breakdown or change in the effectiveness of a resistant potato variety which relates to an exceptional change in the composition of nematode species, pathotype or virulence group, the Scottish Ministers must ensure that this occurrence is investigated and, where applicable, the pathotype and virulence group of the Potato Cyst Nematode involved is confirmed by appropriate methods.”
- 14.** In schedule 16 (Special measures for the control of Potato Ring Rot)—
  - (a) in paragraph 1, at the end of the definition of “basic seed potatoes”—
    - (i) omit “and”, and
    - (ii) insert—
      - ““official testing” means testing in an official laboratory or an officially supervised laboratory; and”,
  - (b) after paragraph 1, insert—

#### “Official surveys and testing

- 1A.** The Scottish Ministers must ensure that systematic official surveys for Potato Ring Rot are carried out on tubers of *Solanum tuberosum* L. and, where appropriate, on plants of *Solanum tuberosum* L., originating in Scotland in accordance with Article 2(1) of [Directive 93/85/EEC](#) **(11)**.
- 1B.** Where the presence of Potato Ring Rot in specified plant material is suspected, the Scottish Ministers must ensure that—
  - (a) official testing is carried out using the method set out in Annex 1 to [Directive 93/85/EEC](#) and in accordance with the conditions specified in point 1 of Annex 2 to [Directive 93/85/EEC](#) to confirm or refute its presence;
  - (b) the following are retained and appropriately conserved pending completion of the official testing—
    - (i) all tubers samples, and wherever possible, all plants sampled;
    - (ii) any remaining extract and additional preparation material for the screening tests;

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**(11)** OJ L 259, 18.10.1993, p.1, as amended by Commission [Directive 2006/56/EC](#) (OJ L 182, 4.7.2006, p.1).

- (iii) all relevant documentation; and
- (c) pending the confirmation or refutation of its presence, where suspect diagnostic visual symptoms of Potato Ring Rot have been seen or symptoms of Potato Ring Rot have been identified by a positive immunofluorescence test or other appropriate positive test—
  - (i) the movement of all lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except where it has been established that there is no identifiable risk of Potato Ring Rot spreading;
  - (ii) steps are taken to trace the origin of the suspected occurrence; and
  - (iii) additional appropriate precautionary measures based on the level of estimated risk to prevent any spread of the plant pest are taken.

**1C.** A notice under article 32 may contain measures for the purposes of paragraph 1B(c)(i) to (iii).

#### **Measures to be taken following the confirmation of the presence of Potato Ring Rot**

**1D.** If the presence of Potato Ring Rot is confirmed in a sample of specified plant material following official testing carried out pursuant to paragraph 1B(a) or 1E, the Scottish Ministers must ensure that—

- (a) the specified plant material, the consignment or lot and any object from which the sample was taken and, where appropriate, the place of production and field from which the specified plant material was harvested is designated as contaminated by an inspector;
- (b) an inspector determines the extent of the probable contamination through pre- or post-harvest contact or through any production link with anything designated as contaminated under sub-paragraph (a), taking into account the provisions in point 1 of Annex 3 to [Directive 93/85/EEC](#);
- (c) a zone is demarcated by an inspector on the basis of the designation made under sub-paragraph (a), taking into account the provisions in point 2 of Annex 3 to [Directive 93/85/EEC](#).

**1E.** Where specified plant material has been designated as contaminated under paragraph 1D(a), the Scottish Ministers must ensure that testing is carried out on potato stocks which are clonally related to that specified plant material in the manner specified in paragraph 1B in order to determine the probable primary source of infection and the extent of the probable contamination.

**1F.** Any such testing must be carried out on as much specified plant material as is necessary to determine the probable primary source of infection and the extent of the probable contamination.

**1G.** Where any specified plant material or object is determined by an inspector under paragraph 1D(b) to be probably contaminated, the inspector must designate that material or object as probably contaminated.

**1H.** Any designation by an inspector under paragraph 1D(a) or 1G must be by notice served under article 32.”

- (c) in paragraph 2—



- (i) in the words before sub-paragraph (a) for “for the purposes of Article 5(1)(a) of [Directive 93/85/EEC](#)” substitute “in accordance with paragraph 1D(a)”, and
- (ii) in sub-paragraph (b) for “may” substitute “must”,
- (d) in paragraph 3(b) for “paragraph” substitute “point”.
- (e) in paragraph 4—
  - (i) in the words before sub-paragraph (a) for “for the purposes of Article 5(1)(b) of [Directive 93/85/EEC](#)” substitute “in accordance with paragraph 1G, an inspector must serve a notice under article 32 requiring that”, and
  - (ii) in sub-paragraph (b)—
    - (aa) for “a notice under article 32 may require the material to” substitute “the material must”
    - (bb) for “paragraph” substitute “point”,
- (f) in paragraph 6—
  - (i) for the words before sub-paragraph (a) substitute “Where any machinery, vehicle, vessel, store or any part of such machinery, vehicle, vessel or store, or any object (including packaging material) has been designated by an inspector as contaminated in accordance with paragraph 1D(a) or as probably contaminated in accordance with paragraph 1G, an inspector must serve a notice requiring that it is—”, and
  - (ii) in sub-paragraphs (a) and (b) omit “be”
- (g) for paragraph 8 substitute—

“8. Without prejudice to paragraph 6 or to any other measures which may be required by an inspector under this Order, where a place of production has been designated as contaminated by an inspector in accordance with paragraph 1D(a), the inspector must serve a notice under article 32 which complies with the applicable requirements of paragraph 9 to 16.”
- (h) in paragraph 9—
  - (i) for “for the purposes of Article 5(1)(a) of [Directive 93/85/EEC](#)” substitute “in accordance with paragraph 1D(a)”, and
  - (ii) for “may” substitute “must”,
- (i) in paragraph 10, at the end of sub-paragraph (b) insert “, and that the harvested tubers be subjected to official testing using the method set out in Annex 1 to [Directive 93/85/EEC](#)”,
- (j) after paragraph 10, insert—

“10A. Where an inspector serves a notice requiring the measures specified in paragraph 10, the Scottish Ministers must ensure that an official survey is carried out in relation to the field in which potatoes mentioned in paragraph 10(c) are planted, in accordance with Article 2 of [Directive 93/85/EEC](#).”;
- (k) in paragraph 11, at the end of sub-paragraph (b) insert “, and that the harvested tubers be subjected to official testing using the method set out in Annex 1 to [Directive 93/85/EEC](#)”,
- (l) in paragraph 12—
  - (i) in the words before sub-paragraph (a)—
    - (aa) for “is satisfied” to “[Directive 93/85/EEC](#)”, substitute “has designated a place of production as contaminated in accordance with paragraph 1D(a)”, and
    - (bb) for “may” substitute “must”,

- (ii) for sub-paragraph (a) substitute—
  - “(a) in the cases where an inspector is satisfied that the risk of volunteer potato plants and other naturally-found host plants of Potato Ring Rot has been eliminated, that from the date of receipt of the notice until the end of the next consecutive growing year, the following shall not be planted—
    - (i) tubers, plants or true seed of potato;
    - (ii) naturally found host plants of Potato Ring Rot; or
    - (iii) pre-basic seed potatoes or basic seed potatoes, except for the production of ware potatoes only;”
  - (iii) in sub-paragraph (b) for “for the purposes of Article 5(1)(a) of [Directive 93/85/EEC](#)” substitute “in accordance with paragraph 1D(a)”,
  - (iv) in sub-paragraph (d) at the end, insert “ and that official testing be carried out on harvested tubers in each field using the method set out in Annex 1 to [Directive 93/85/EEC](#)”,
- (m) in paragraph 13—
  - (i) in the words before sub-paragraph (a)—
    - (aa) for “is satisfied” to “[Directive 93/85/EEC](#)” substitute “has designated a place of production as contaminated in accordance with paragraph 1D(a)”,
    - (bb) after “in that unit” insert “the inspector must serve a notice requiring that”,
  - (ii) omit sub-paragraph (b) and the preceding “and”,
- (n) for paragraph 14 substitute—
 

“14. An inspector may not grant an authorisation under paragraph 13 unless—

  - (a) all of the measures to eliminate Potato Ring Rot and to remove all host plants which are specified in a notice in relation to the place of production in which the unit of protected crop production is situated have been complied with;
  - (b) the growing medium in the unit has been completely changed; and
  - (c) the unit and all equipment used on the unit has been cleansed and disinfected to eliminate Potato Ring Rot and to remove all host plant material.”,
- (o) in paragraph 16—
  - (i) for “Where” substitute “Except where the Scottish Ministers have served a notice under paragraph 18, in cases where”, and
  - (ii) for “for the purposes of Article 5(1)(a) of [Directive 93/85/EEC](#)” substitute “in accordance with paragraph 1D(a)”,
- (p) after paragraph 16 insert—
 

“17. Paragraphs 18 to 24 apply where an inspector has demarcated a zone pursuant to paragraph 1D(c).

**18.** The inspector may, by notice, specify—

  - (a) how long the zone is to remain demarcated; and
  - (b) the measures which apply in the demarcated zone.

**19.** A notice under paragraph 18—

  - (a) must be in writing;
  - (b) must describe the extent of the demarcated zone;

- (c) must specify the date on which each measure takes effect;
- (d) must be published in a manner appropriate to bring it to the attention of the public; and
- (e) may be amended, suspended or revoked, in whole or in part, by further notice.

**20.** Any premises which are partly within and partly outside a demarcated zone must be treated as within that zone for the purposes of this schedule, except where the part which is outside the demarcated zone is not in Scotland.

**21.** A notice published in accordance with paragraph 19 is to be treated as having been served on—

- (a) any occupier or other person in charge of any premises within the demarcated zone; and
- (b) any person who operates machinery or carries out any other activity in relation to the production of potatoes within the demarcated zone.

**22.** A notice under paragraph 18 must specify that—

- (a) any machinery or storage facilities at premises within the demarcated zone which are used for potato production must be cleansed and disinfected in an appropriate manner so that there is no identifiable risk of Potato Ring Rot surviving or spreading;
- (b) during the specified period, only pre-basic seed potatoes or basic seed potatoes or seed potatoes grown under official control may be planted and any seed potatoes grown in a place of production which is possibly contaminated must be officially tested after harvesting; and
- (c) during the specified period, potatoes intended for planting must be handled separately from all other potatoes at premises within the zone or that a system of cleansing and, where appropriate, disinfection must be carried out between the handling of seed and ware potatoes.

**23.** The inspector must ensure that during the specified period—

- (a) premises growing, storing or handling potato tubers and premises which operate potato machinery under contract are supervised by an inspector;
- (b) an official survey is carried out in accordance with Article 2 of [Directive 93/85/EEC](#);
- (c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.

**24.** For the purposes of paragraphs 22 and 23, the “specified period” means the period specified in the notice, which must be at least three growing seasons following the year in which the relevant zone was demarcated.”.

**15.—(1)** In schedule 17 (*Ralstonia solanacearum*), in Part A, (Special measures for the control of *Ralstonia solanacearum*)—

- (a) after paragraph 1, insert—

### “Official surveys and testing

**1A.** The Scottish Ministers must ensure that annual systematic official surveys are carried out to identify the presence of *R. solanacearum* on specified plant material originating in Scotland in accordance with Article 2 of [Directive 98/57/EC](#)(**12**).

**1B.** Where the presence of *R. solanacearum* is suspected, the Scottish Ministers must ensure that—

- (a) official testing is carried out to confirm or refute its presence—
  - (i) in the case of specified plant material, using the method set out in Annex 2 to [Directive 98/57/EC](#) and in accordance with the conditions specified in point 1 of Annex 3 to [Directive 98/57/EC](#);
  - (ii) in any other case, using any officially approved method;
- (b) pending the confirmation or refutation of its presence, where suspect diagnostic visual symptoms of *R. solanacearum* have been seen and a positive result in a rapid screening test has been obtained or a positive result in the screening tests specified in point 2 of section 1 and section 3 of Annex 2 to [Directive 98/57/EC](#) has been obtained—
  - (i) the movement of all plants and tubers from all crops, lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except where it has been established that there is no identifiable risk of *R. solanacearum* spreading;
  - (ii) steps are taken to trace the origin of the suspected occurrence; and
  - (iii) additional appropriate precautionary measures based on the level of estimated risk are taken to prevent any spread of *R. solanacearum*.

**1C.** A notice under article 32 may contain measures for the purposes of paragraph 1B(b)(i) to (iii).

### **Measures to be taken following confirmation of the presence of *R. solanacearum***

**1D.** If the presence of *R. solanacearum* is confirmed following official testing carried out pursuant to paragraph 1B, the Scottish Ministers must ensure that the actions specified in paragraphs 1E to 1G are taken in accordance with sound scientific principles, the biology of *R. solanacearum* and the relevant production, marketing and processing systems of host plants of *R. solanacearum*.

**1E.** In the case of specified plant material, the actions are—

- (a) an investigation by an inspector to determine the extent and the primary sources of the contamination in accordance with Annex 4 to [Directive 98/57/EC](#);
- (b) further official testing, including on all clonally related seed potato stocks;
- (c) the designation of the following as contaminated by an inspector—
  - (i) the specified plant material and consignment or lot from which the sample was taken;
  - (ii) any objects which have been in contact with that sample;

- (iii) any unit or field of protected crop production and any place of production of the specified plant material from which the sample was taken;
  - (d) a determination by an inspector of the extent of probable contamination through pre- or post-harvest contact, through production, irrigation or spraying links or through clonal relationship;
  - (e) the demarcation of a zone by an inspector on the basis of the designation under sub-paragraph (c), the determination made under sub-paragraph (d) and the possible spread of *R. solanacearum* in accordance with point 2(i) of Annex 5 to [Directive 98/57/EC](#).
- 1F.** In the case of host plants, other than specified plant material, where the production of specified plant material is identified to be at risk by an inspector, the actions are—
  - (a) an investigation by an inspector to determine the extent and the primary sources of the contamination in accordance with Annex 4 to [Directive 98/57/EC](#);
  - (b) the designation by an inspector of host plants from which the sample was taken as contaminated;
  - (c) a determination of the probable contamination by an inspector;
  - (d) the demarcation of a zone by an inspector on the basis of the designation under sub-paragraph (b), the determination under sub-paragraph (c) and the possible spread of *R. solanacearum* in accordance with point 2(i) of Annex 5 to [Directive 98/57/EC](#).
- 1G.** In the case of surface water and associated wild solanaceous host plants where production of specified plant material is identified by an inspector to be at risk through irrigation, spraying or flooding of surface water, the actions are—
  - (a) an investigation by an inspector to establish the extent of the contamination, which includes an official survey at appropriate times on samples of surface water and, if present, wild solanaceous host plants;
  - (b) the designation of surface water from which the sample was taken by an inspector, to the extent appropriate and on the basis of the investigation under sub-paragraph (a);
  - (c) a determination by an inspector of the probable contamination on the basis of the designation under sub-paragraph (b);
  - (d) the demarcation of a zone by an inspector on the basis of the designation under sub-paragraph (b), the determination under sub-paragraph (c) and the possible spread of *R. solanacearum* in accordance with point 2(ii) of Annex 5 to [Directive 98/57/EC](#).”,
- (b) in paragraph 2—
  - (i) in the words before sub-paragraph (a) for “for the purposes of Article 5(1)(a)(ii) of [Directive 98/57/EC](#)” substitute “ in accordance with paragraph 1E(c), an inspector must serve a notice under article 32 requiring that”, and
  - (ii) in sub-paragraph (b)—
    - (aa) for “a notice under article 32 may require that material to” substitute “the material must”,
    - (bb) for “paragraph” substitute “point”,
- (c) in paragraph 4—

- (i) in the words before sub-paragraph (a) for “for the purposes of Article 5(1)(a)(iii) and Article 5(1)(c)(iii) of [Directive 98/57/EC](#)” substitute “in accordance with paragraph 1E(d), an inspector must serve a notice under article 32 requiring that”,
- (ii) in sub-paragraph (b)—
  - (aa) for “a notice under article 32 may require that material to” substitute “the material must”,
  - (bb) for “paragraph” substitute “point”,
- (d) in paragraph 6—
  - (i) for the words before sub-paragraph (a) substitute—
 

“A notice under article 32 must require that any machinery, vehicle, vessel, store, or any part of such machinery, vehicle, vessel or store and any other object, including packaging material designated by any inspector to be contaminated in accordance with paragraph 1E(c), or probably contaminated in accordance with paragraph 1E(d) or 1F(c), must either”,
  - (ii) in sub-paragraph (b), after “*R. solanacearum*” insert “surviving or”,
- (e) for paragraph 8, substitute—
 

“8. Without prejudice to paragraph 6 or to any other measures which may be required by an inspector under this Order, in relation to a place of production which has been designated by an inspector as contaminated in accordance with paragraph 1E(c) and which is in a zone which has been demarcated by an inspector in accordance with paragraph 1E(e), 1F(d) or 1G(d) the inspector must serve a notice under article 32 which complies with the applicable requirements of paragraph 9 to 16.”,
- (f) in paragraph 9—
  - (i) for “for the purposes of Article 5(1)(a)(ii) of [Directive 98/57/EC](#)” substitute “in accordance with paragraph 1E(c)”,
  - (ii) for “may” substitute “must”,
- (g) in paragraph 10(b)—
  - (i) after “potato” where it first occurs, insert “or tomato”,
  - (ii) for “free” substitute “found to be free, during official inspections,” and
  - (iii) at the end insert “, and that harvested tubers or tomato plants be subjected to official testing using the method set out in Annex 2 to [Directive 98/57/EC](#)”,
- (h) in paragraph 11(b) after “seed or ware production” insert—
 

“in circumstances where—

  - (i) the field or the unit has been found free from volunteer potato and tomato plants and other host plants, including solanaceous weeds, during official inspections of *R. solanacearum*, for at least the two consecutive growing years prior to planting; and
  - (ii) that harvested tubers or tomato plants have been subjected to official testing using the method set out in Annex 2 to [Directive 98/57/EC](#).”,
- (i) in paragraph 12—
  - (i) in the words before sub-paragraph (a)—
    - (aa) for “for the purposes of Article 5(1)(a)(ii) of [Directive 98/57/EC](#)” substitute “in accordance with paragraph 1E(c)”,
    - (bb) at the end insert “, the notice referred to in paragraph 8 must require that”,

- (ii) omit sub-paragraph (b),
- (j) for paragraph 13 substitute—
  - “13. An inspector may not grant an authorisation under paragraph 12(a) unless—
    - (a) all of the measures to eliminate *R. solanacearum* and to remove all host plants which are specified in a notice in relation to the place of production in which the unit is situated have been complied with;
    - (b) the growing medium in the unit has been completely changed; and
    - (c) the unit and all equipment used on the unit has been cleansed and disinfected to eliminate *R. solanacearum* and to remove all host plant material.”
- (k) in paragraph 15—
  - (i) for “for the purposes of Article 5(1)(a)(ii) of [Directive 98/57/EC](#)” in each place where it occurs, substitute “in accordance with paragraph 1E(c)”,
  - (ii) in the words before sub-paragraph (a) for “may” substitute “must”,
  - (iii) after sub-paragraph (c) omit “and”
  - (iv) after sub-paragraph (d) insert—
    - “and
    - (e) official inspections of growing crops at appropriate times and official testing of harvested potatoes are carried out in accordance with the method set out in Annex 2 to [Directive 98/57/EC](#).”,
- (l) in paragraph 16, in the words before sub-paragraph (a)—
  - (i) for “Where” substitute “Except where the Scottish Ministers have published a notice under Part B, where”,
  - (ii) for “for the purposes of Article 5(1)(a)(ii) of [Directive 98/57/EC](#)” substitute “in accordance with paragraph 1E(c)”,
  - (iii) for “may” substitute “must”,
- (2) In schedule 17, in Part B (Demarcation of zones for the control of *Ralstonia Solanacearum*)—
  - (a) in paragraph 1, for “article 39(7)” substitute “paragraphs 1E(e), 1F(d) or 1G(d) of Part A of this Schedule”,
  - (b) in paragraph 6—
    - (i) in the words before sub-paragraph (a)(i), for “for the purposes of Article 5(1)(a)(iv) of [Directive 98/57/EC](#)” substitute “in accordance with paragraph 1E or 1F of Part A of this Schedule”,
    - (ii) in sub-paragraph (a)(i), for “stores” substitute “storage facilities”,
    - (iii) in sub-paragraph (a)(iii), at the beginning, insert “during the specified period”,
    - (iv) in sub-paragraph (a)(iv), after “in the zone,” insert “during the specified period”, and
    - (v) in sub-paragraph (b) for “for the purposes of Article 5(1)(c)(ii) of [Directive 98/57/EC](#)” substitute “in accordance with paragraph 1G of Part A of this Schedule”,
  - (c) after paragraph 6 insert—
    - “7. The Scottish Ministers must ensure that during the specified period—
      - (a) premises growing, storing or handling potato tubers and premises which operate potato machinery under contract are supervised by inspectors;
      - (b) an official survey is carried out in accordance with Article 2 of [Directive 98/57/EC](#);

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**Draft Legislation:** This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, *The Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2019* ISBN 978-0-11-104137-6

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(c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.

8. For the purposes of paragraphs 6 and 7, “the specified period” means the period specified in the notice referred to in paragraph 1, which must be at least three growing seasons following the year in which the relevant zone was demarcated.”.

#### **Revocation of the Plant Health (*Phytophthora ramorum*) (Scotland) Order 2004**

16. The Plant Health (*Phytophthora ramorum*) (Scotland) Order 2004<sup>(13)</sup> is revoked.

#### **Consequential amendment to the Plant Health Fees (Scotland) Regulations 2008**

17. In the Plant Health Fees (Scotland) Regulations 2008<sup>(14)</sup>, in regulation 2 (interpretation)—

- (a) in the definition of “authority”, omit “article 8 of the 2004 Order or, as the case may be, under”, and
- (b) omit the definition of “the 2004 Order”.

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<sup>(13)</sup> S.S.I. 2004/488, as amended by S.S.I. 2007/416 and S.I. 2011/1043.

<sup>(14)</sup> S.S.I. 2008/153, as amended by S.S.I. 2010/207. These amendments are made in consequence of the revocation of S.S.I. 2004/488. S.S.I. 2008/153 is further amended by Part 4.