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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 3**

**Amendment of the Plant Health (Scotland) Order 2005: exiting the European Union**

**CHAPTER 2**

**Amendment of Part 2**

**22.** In article 3 (interpretation of part 2)—

- (a) omit the definitions of “approved place of inspection”, “Customs Code” and “customs document” and substitute—

““approved place of inspection means a place of destination of relevant material approved by the Scottish Ministers under article 17 or, in relation to other UK territories, by the appropriate UK plant health authority under equivalent provisions of the relevant Plant Health Order,

“correct phytosanitary certificate”, in relation to notifiable relevant material, means the phytosanitary certificate or phytosanitary certificate for re-export which has been issued—

(a) in the manner specified in article 7(2) to (5), and

(b) in respect of the requirements prescribed by article 5,

“designated area of plant health control” means a place close to a point of entry which has been designated as an area of plant health control by the Scottish Ministers and the Commissioners for Her Majesty’s Revenue and Customs,

“EU transit material” means any notifiable relevant material from a third country, other than country or territory within the European Union, which is brought to the United Kingdom via the European Union and which, on its entry into the European Union, was not subject to—

(a) the formalities described in Article 13a of [Directive 2000/29/EC](#), or

(b) other similar official controls under Regulation (EU) 2017/625 of the European Parliament and of the Council<sup>(1)</sup>, as it has effect in EU law;

“notified EU material” means any notifiable relevant material originating in the European Union or Switzerland which is intended to be, or has been, consigned to the United Kingdom from the European Union or Switzerland via a point of entry in Scotland and the arrival of which in Scotland has been notified to the Scottish Ministers in accordance with article 6(1),”

- (b) after the definition of “identity check” insert—

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(1) OJ L 095 7.4.2017, p.1.

““point of entry” means—

- (a) in the case of relevant material which arrives by air, the airport at which the material first arrives in the United Kingdom,
- (b) in the case of relevant material which arrives by maritime or fluvial transport, the port at which the material first arrives in the United Kingdom, or
- (c) in the case of relevant material which arrives by rail, the rail freight terminal at which the material first arrives in the United Kingdom,
- (d) in the case of relevant material which arrives by road, the initial destination of the material after its arrival in the United Kingdom,

“trade documents” in relation to a consignment of notifiable relevant material, means the invoice, delivery note, consignment note or similar document which accompanies the consignment,”

- (c) in the definition of “working day” for “6(3)(b)” substitute “6(2)(c)(ii)”.

23. For article 4 (application of Part 2) substitute—

**“Application of Part 2**

4. This Part applies to plant pests and relevant material which are brought into Scotland from a third country, whether directly or via another UK territory.”.

24. In article 5 (prohibitions and restrictions on landing plant pests and relevant material)—

- (a) for paragraph (1) substitute—

“(1) No person may bring any of the following into Scotland—

- (a) any plant pest of a description specified in Part A, B or D of the list of prohibited plant pests;
- (b) any relevant material of a description specified in column 2 of Part A, B or D of the list of prohibited infested material which is carrying or infected with a plant pest of a description specified in the corresponding entry in respect of that description of relevant material in column 3;
- (c) any plant pest which, although not specified in Part A, B or D of the list of prohibited plant pests, or in column 3 of Part A, B or D of the list of prohibited infested material, is not normally present in Great Britain and which is likely to be injurious to plants in Great Britain;
- (d) any relevant material of a description specified in column 2 of Part A or B of the list of prohibited material which originates in a third country specified in the corresponding entry in respect of that description of relevant material in column 3;
- (e) any relevant material of a description specified in column 2 of Part A or D of the list of regulated material, unless the requirements specified in the corresponding entries in respect of that description of relevant material in column 3 are complied with;
- (f) in the case of any relevant material which is destined for a pest free area, any plant pest of a description specified in column 2 of Part C of the list of prohibited plant pests which relates to that pest free area;
- (g) in the case of any relevant material which is destined for a pest free area specified in column 4 of Part C of the list of prohibited infested material, any relevant material of a description specified in the corresponding entry in column 2 of that

Part of that list which is carrying or infested with a plant pest of a description specified in the corresponding entry in column 3;

- (h) in the case of any relevant material which is destined for a pest free area specified in column 4 of Part C of the list of regulated material, any relevant material of a description specified in the corresponding entry in column 2 of that Part, unless the requirements specified in the corresponding entries in respect of that relevant material in column 3 are complied with.”,

(b) after paragraph (2) insert—

“(3) Paragraph (1)(e) does not apply to any relevant material which is prohibited from being brought into Scotland under paragraph (1)(d).

(4) Paragraph (1)(e), (g) and (h) are subject to article 8(1).

(5) The prohibitions or restrictions in paragraph (1)(b) to (h) do not apply to relevant material which enters a point of entry that is located in another UK territory and is discharged in that territory in accordance with article 12 of the relevant Plant Health Order.”.

25. For article 6 (advance notification of landing) substitute—

**“Advance notification of the bringing of relevant material into Scotland**

6.—(1) Subject to articles 8(1) and 16 and to paragraph (4), no person may bring any notifiable relevant material into a point of entry that is located in Scotland, unless notice is given in accordance with this article.

(2) A notice must be given—

- (a) in accordance with the requirements of schedule 12,  
(b) to the Scottish Ministers at the specified address, and  
(c) in time to arrive at the specified address—

- (i) in the case of any relevant material brought by air, at least four working hours before the relevant material arrives in Scotland,  
(ii) in any other case, at least two working days before the relevant material arrives in Scotland.

(3) In the case of plants of *Castanea* Mill, *Fraxinus* L., *Olea europaea* L., *Pinus* L., *Platanus* L., *Prunus* L., *Quercus* L. or *Ulmus* L., intended for planting, originating in the European Union or Switzerland, the following information must be included under item 13 of the notice set out in schedule 12—

- (a) their intended destination,  
(b) their genus, species and quantity,  
(c) the identification number of the supplier of the plants.

(4) If a person can reasonably show that it was not possible to give notice on accordance with paragraph (2)(c) because the person was not aware that the material had been consigned, the person must give notice as soon as is reasonably practicable.

(5) In this article “specified address” means the address given by the Scottish Ministers from time to time for the purposes of this article, which may include an address for electronic communications.”.

26. After article 6, insert—

**“EU transit material**

**6A.**—(1) No person may bring any EU transit material into a RoRo port that is located in Scotland unless that material is destined for a single approved place of inspection.

(2) Paragraph (1) is subject to article 8(1).

(3) In this paragraph, “RoRo port” means—

(a) a RoRo listed location within the meaning of regulation 130 of the Customs (Import Duty) (EU Exit) Regulations 2018(2), or

(b) if a notice has not been published pursuant to regulation 130(1) of those Regulations, a point of entry that—

(i) predominantly services roll-on/roll-off ferries operating between Scotland and a member State, and

(ii) is listed in a notice published by the Scottish Ministers from time to time.”.

27. For article 7 (requirements for certificates) substitute—

**“Requirements for phytosanitary certificate or phytosanitary certificate for re-export**

**7.**—(1) No person may bring any notifiable relevant material into a point of entry located in Scotland unless the material is accompanied by a phytosanitary certificate or a phytosanitary certificate for re-export, which—

(a) certifies that the material meets the applicable requirements prescribed by article 5, and

(b) complies with the applicable requirements of paragraphs (2) to (5).

(2) In the case of transit material which has been split up, combined with other consignments or repackaged, the relevant material must be accompanied by a phytosanitary certificate for re-export which was issued in the country of transit.

(3) In the case of transit material which has or may have been exposed to infection or contamination by any plant pest, is not the same material as in the original consignment or which has been processed so as to change its nature, the relevant material must be accompanied by a phytosanitary certificate which was issued in the country of transit.

(4) Where paragraph (2) or (3) does not apply, the notifiable relevant material must be accompanied by a phytosanitary certificate which was issued in the country in which that material originates or from which it was consigned.

(5) A phytosanitary certificate must be the original certificate and the phytosanitary certificate for re-export must be the original certificate or a copy of the original certificate certified by an authorised officer.

(6) Paragraph (1) does not apply to any relevant material which—

(a) is in the course of its consignment between two third countries under appropriate customs procedures or has been consigned to Scotland from another part of the United Kingdom via a third country,

(b) does not undergo any change in customs status, and

(c) is transported in such a way as to prevent the accidental escape of plant pests.

(7) Paragraph (1) is subject to article 8.

(8) In paragraphs (2) and (3), “transit material” means relevant material consigned to Scotland via a third country by way of transit.”

**28.** In article 8 (exceptions from certain prohibitions and requirements)—

(a) for paragraph (1) substitute—

“(1) The prohibitions relating to relevant material in articles 5(1)(e) and (h), 6(1), 6A(1) and 10(1) do not apply to relevant material of a description in paragraph (2) and which is brought into Scotland in the baggage of a passenger or other traveller coming from any third country, other than any country or territory in the European Union or Switzerland or to exempt material of a description in paragraph (3A) and which is brought into Scotland in the baggage of a passenger or other traveller coming from the European Union or Switzerland providing that the relevant material or, as the case may be, the exempt material—

- (a) does not show any signs of the presence of a plant pest,
- (b) is not intended for use in the course of a trade or business, and
- (c) is intended for household use.”,

(b) in paragraph (2), in the words before sub-paragraph (a) after “which” insert “originates in a third country other than the European Union or Switzerland and”, and

(c) after paragraph (3) insert—

“(3A) The exempt material referred to in paragraph (1) is a small quantity of relevant material originating in the European Union or Switzerland, other than plants of *Castanea* Mill. intended for planting, plants of *Fraxinus* L. intended for planting or plants, other than seeds, of *Platanus* L. intended for planting;”.

**29.** In article 9 ( presentation and display of documents)—

(a) for paragraph (1) substitute—

“(1) The following documents must be delivered to an inspector by the importer of a consignment of notifiable relevant material within three days of the date of its arrival in Scotland—

- (a) any phytosanitary certificate or phytosanitary certificate for re-export which is required under article 7 to accompany the consignment of notifiable relevant material, and
- (b) in the case of notified EU material, the trade documents which accompany the consignment.”.

(b) in paragraph (2)—

- (i) for “Subject to article 30(4), importers” substitute “Importers”, and
- (ii) for “relevant material referred to in sub-paragraph (a) or (b) of article 6(2)” substitute “notifiable relevant material”.

(c) after paragraph (3), insert—

“(4) In paragraph (2), “customs document” means a document required by the Commissioners for Her Majesty’s Revenue and Customs for placing relevant material under a Customs procedure within the meaning of section 3(3) of the Taxation (Cross-Border Trade) Act 2018(3).

(5) Paragraph (1) does not apply—

- (a) in the case of a consignment referred to in paragraph (3), or

- (b) to any notifiable relevant material which is in the course of consignment to an approved place of inspection in another UK territory.”.

30. For article 10 ( prohibition on removal of relevant material from an area of plant health control) substitute—

**“Prohibitions on removal of notifiable relevant material**

10.—(1) This article applies to notifiable relevant material, other than notified EU material, which is brought into a point of entry that is located in Scotland.

(2) No person may move any notifiable relevant material or cause any notifiable relevant material to be moved from its point of entry unless the material is being moved to a designated area of plant health control or an approved place of inspection.

(3) Subject to article 11, no person may remove any notifiable relevant material or cause any notifiable relevant material to be removed from its point of entry, or where the material is moved to a designated area of plant health control or an approved place of inspection in Scotland, from the designated area of plant health control or from the approved place of inspection, unless an inspector has discharged the material under article 12 or the removal of the material is permitted under Part 6.

(4) Any notifiable relevant material which is being held at a point of entry or a designated area of plant health control under paragraph (3) must be stored by the importer under the supervision and in accordance with the instructions of an inspector.

(5) The importer is responsible for the costs of storing the notifiable relevant material pending its release.”.

31. In article 11 (exceptions from prohibition on removal of relevant material from an area of plant health control)—

- (a) for the words before sub-paragraph (a) substitute “Article 10(3) does not apply to”, and  
 (b) in paragraph (c) for “European Union” substitute “United Kingdom”.

32. In article 12 (plant health discharge)—

- (a) at the beginning, insert—

“(A1) This article applies to any notifiable relevant material, other than notified EU material, which is brought into a point of entry that is located in Scotland and is not in the course of its consignment to an approved place of inspection in another UK territory.”,

- (b) in paragraph(1), for “article 10(1)” substitute “article 10(3)”.

- (c) in paragraph (2)—

(i) for “Subject to paragraphs (5) and (6), an inspector” substitute “An inspector”,

- (ii) for sub-paragraph (a) substitute—

“(a) that the relevant material meets the applicable requirements prescribed by article 5,”,

- (iii) omit sub-paragraphs (b) to (e),

(iv) in sub-paragraph (f), after “re-export” insert “which accompanied the relevant material on entry”,

(v) in sub-paragraph (g), for the words “certificate” in the first place it occurs, to the end, substitute “correct phytosanitary certificate”,

- (d) in paragraph (3), omit “to (e)”,

- (e) omit paragraphs (5) and (6),

- (f) in paragraph (7)—
  - (i) after “paragraph (2)” omit “(g)”,
  - (ii) in sub-paragraph (a) for “the date the certificate was delivered in accordance with article 9(1)” substitute “date it”,
  - (iii) omit sub-paragraph (b) and the preceding “and”,
- (g) in paragraph (8), for “a plant health check” substitute “an examination under paragraph (3)”.

33. After article 12, insert—

**“Requirements applicable to notified EU material**

**12A.**—(1) This article applies to notified EU material which is brought into a point of entry that is located in Scotland.

- (2) An inspector must carry out an examination of—
  - (a) the phytosanitary certificate or phytosanitary certificate for re-export which accompanies a consignment of notified EU material to confirm that the consignment is accompanied by the correct phytosanitary certificate, and
  - (b) the trade documents that accompany the consignment to confirm that those documents correspond to the description of the relevant material in the phytosanitary certificate or phytosanitary certificate for re-export.”.

34. In article 14(1) (power of an officer for Revenue and Customs), for “under customs supervision pursuant to Article 37 of the Customs Code” to the end, substitute “subject to the control of an officer of Revenue and Customs within the meaning of Schedule 1 to the Taxation (Cross-Border Trade) Act 2018”.

35. In article 15 (general provisions relating to certificates)—

- (a) in paragraph (1)—
  - (i) from “article and—” to the end substitute “article and must be in the form set out in Part A or B, respectively, of Schedule 11.”,
- (b) in paragraph (2)—
  - (i) in sub-paragraph (a), omit “the responsible official body or”,
  - (ii) in sub-paragraph (b)(4), for “one of the official languages of the European Union” substitute “English”,
  - (iii) omit sub-paragraph (c), and
  - (iv) in sub-paragraph (d)(5) for “Organisations of the Member States of the European Union” substitute “Organisation of the United Kingdom”,
- (c) for paragraph (3) substitute—

“(3) A phytosanitary certificate or phytosanitary certificate for re-export in respect of any relevant material of a description specified in column 2 of Part A, C or D of the list of regulated material, for which more than one set of entry requirements is specified in the corresponding entry in column 3 of Part A, C or D of that list, must specify under the heading “Additional declaration” the particular set of requirements with which the relevant material complies.”.

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(4) Article 15(2)(b) was amended by [S.I. 2011/1043](#).

(5) Article 15(2)(d) was amended by [S.I. 2011/1043](#).

36. In article 16 (requirements to be met by relevant material prior to inspection at its place of country of destination)—

(a) for the heading to the article and for paragraphs (1) and (2)(6) substitute—

**“Requirements to be met by relevant material destined for an approved place of inspection**

16.—(1) This article applies to notifiable relevant material, other than notified EU material, which is destined for an approved place of inspection.

(2) No person may, in relation to any relevant material to which this article applies move such relevant material within Scotland, or where applicable, from Scotland to an approved place of inspection in another UK territory, unless it is accompanied by a copy of the phytosanitary certificate or phytosanitary certificate for re-export which accompanied the material on its entry into Scotland and—

(a) its packaging and the vehicle in which it is transported is sealed in such a way that there is no risk of the relevant material causing infestation, infection or contamination or a change occurring in the identity of the material, or

(b) where the material is destined for an approved place of inspection in Scotland, its movement has been authorised by the Scottish Ministers.”,

(b) in paragraph (3)—

(i) in the words before sub-paragraph (a)—

(aa) for “to which this article applies” to “European Union” substitute “which is destined for an approved place of inspection in Scotland”, and

(bb) for “five” substitute “three”,

(ii) in sub-paragraph (a) omit “or other area of plant health control”,

(iii) in sub-paragraph (b) for “place referred to in paragraph (a)” substitute “approved place of inspection”,

(iv) omit sub-paragraphs (c) and (d).

37. In article 17 (approved places of inspection) —

(a) for paragraph (1) substitute—

“(1) The Scottish Ministers may approve premises which are not located at a point of entry or are not part of a designated area of plant health control as a place at which appropriate checks may be carried out by an inspector in respect of notifiable relevant material, other than notified EU material.”,

(b) in paragraph (2) for “a place of destination” to “inspection” substitute “approval under paragraph (1)”,

(c) for paragraphs (4) and (5) substitute—

“(4) The Scottish Ministers may only approve premises as an approved place of inspection in respect of notifiable relevant material, other than notified EU material, if the premises have been designated or approved by the Commissioners for Her Majesty’s Revenue and Customs for that purpose.

(5) In the case of any other premises, the Scottish Ministers may only approve those premises as an approved place of inspection for the purpose of carrying out appropriate checks in respect of EU transit material.



(6) In this article, “appropriate checks”, in relation to a consignment of relevant material, means—

- (a) an examination of the phytosanitary certificate or phytosanitary certificate for re-export accompanying the consignment to determine whether it is the correct phytosanitary certificate,
- (b) an examination of the consignment to determine whether it corresponds to its description in the trade documents that accompany it,
- (c) an examination of the consignment and its packaging, and where necessary, the vehicle transporting the consignment to determine whether it meets the applicable requirements prescribed in article 5.”.

**38.** Omit article 18 (requirement for plant health movement document).