
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

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

PART 2

Miscellaneous provision

Amendment of the Plant Health (Scotland) Order 2005

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](#)(1).

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;

(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—

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

- (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.”