

**2006 No. 474**

**PLANT HEALTH**

**The Plant Health (Scotland) Amendment Order 2006**

*Made* - - - - *21st September 2006*

*Laid before the Scottish Parliament* *22nd September 2006*

*Coming into force* - *31st October 2006*

The Scottish Ministers, in exercise of the powers conferred by sections 2, 3 and 4(1) of the Plant Health Act 1967(a) as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972(b), and of all other powers enabling them in that behalf hereby, make the following Order:

**Citation and commencement**

1. This Order may be cited as the Plant Health (Scotland) Amendment Order 2006 and shall come into force on 31st October 2006.

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

2.—(1) The Plant Health (Scotland) Order 2005(c) is amended as follows.

(2) In article 2(1) (general interpretation)—

(a) after the definition of “Customs Act”, insert—

““Decision 2006/473/EC” means Commission Decision 2006/473/EC recognising certain third countries and certain areas of third countries as being free from *Xanthomonas campestris* (all strains pathogenic to *Citrus*), *Cercospora angolensis* Carv. et Mendes and *Guignardia citricarpa* Kiely (all strains pathogenic to *Citrus*)(d);”;

(b) in the definition of “Directive 2000/29/EC” after “2005/16/EC,” insert “2005/77/EC(e), 2006/35/EC(f);”;

(c) for the definition of “Europe” substitute—

““Europe” includes Belarus, the Canary Islands, Georgia, Kazakhstan (except the area east of the Ural river), Russia (except the regions of Tyumen, Chelyabinsk, Irkutsk, Kemerovo, Kurgan, Novossibirsk, Omsk, Sverdlovsk, Tomsk, Chita, Kamchatka, Magadan, Amur and Sakhalin, the territories of Krasnoyarsk, Altay, Khabarovsk and Primarie, and the republics

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(a) 1967 c. 8 (“the 1967 Act”); sections 2(1), and 3(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 modified 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). See section 1(2) of the 1967 Act for the definition of “competent authorities”.

(b) 1972 c.62.

(c) S.S.I. 2005/613.

(d) O.J. No. L 187, 8.7.06, p.35, as corrected and renumbered by O.J. No. L 196, 18.7.06, p. 26.

(e) O.J. No. L 296, 12.11.05, p.17.

(f) O.J. No. L 88, 25.3.06, p.9; and see the associated Commission Directive 2006/36/EC (O.J. No. L 88, 25.3.06, p.13).

- of Sakha, Tuva and Buryatia), Ukraine and Turkey (except the area east of the Bosphorus Strait known as Anatolia);”; and
- (d) in the definition of “protected zone”, before “means” insert “, unless expressly provided otherwise.”.
- (3) At the beginning of article 2(3) (General Interpretation), insert “Unless expressly provided otherwise.”.
- (4) In article 12(2) (plant health discharge)–
- (a) after sub-paragraph (a), insert–
- “(aa) if in the course of its consignment to a protected zone listed in the second column of Annex I, Part B of Directive 2000/29/EC, that the relevant material is free from any plant pest of a description specified in the first column opposite the reference to that protected zone;”;
- (b) after sub-paragraph (c), insert–
- “(cc) if listed in the first column of Annex III, Part B of Directive 2000/29/EC, that the relevant material is not in the course of its consignment to a protected zone listed in the second column opposite the reference to the relevant material;”.
- (c) in sub-paragraph (d) for “is” substitute “are”; and
- (d) in sub-paragraph (e) for “is” substitute “are”.
- (5) In article 22 (exceptions from certain prohibitions and requirements), for paragraph (2) substitute–
- “(2) The Scottish Ministers may exempt from the prohibitions on movement in article 21(1) or (2) the movement of relevant material which originates in Great Britain where the Scottish Ministers are satisfied that–
- (a) the movement is made locally by small producers or processors whose entire production and sale of such material is intended for final usage by persons on the local market who are not professionally involved in plant production; and
- (b) there is no risk of the spread of plant pests.”.
- (6) At the end of article 24 (general provisions relating to plant passports), add–
- “(5) Any person who–
- (a) is the final user of relevant material; and
- (b) uses the relevant material in the course of a trade or business,
- shall retain the plant passport which accompanies the relevant material in accordance with article 21 for one year.”.
- (7) In article 29(1) (authority to issue plant passports)–
- (a) omit “any”, and
- (b) for “their” substitute “any”.
- (8) In article 39(4) (miscellaneous provisions for certain solanaceous species), for paragraph (b) substitute “(b) the crop inspection report issued under the Seed Potatoes Regulations, where potatoes, or their direct progeny, marketed or marketable under those Regulations were produced by the report holder”.
- (9) In article 42 (notification of the presence or suspected presence of certain plant pests)–
- (a) in paragraph (1), omit “and shall as soon as reasonably practicable after giving such notice confirm it in writing”; and
- (b) after paragraph (1), insert–
- “(1A) Where a person gives notice in accordance with paragraph (1) orally, that person shall confirm the notice in writing as soon as reasonably practicable.”.
- (10) In article 43 (notification of the likely entry into, or presence in, a free zone of plant pests or relevant material)–

(a) in paragraph (1), omit “and shall as soon as reasonably practicable after giving such notice confirm it in writing”; and

(b) after paragraph (1), insert–

“(1A) Where a person gives notice in accordance with paragraph (1) orally, that person shall confirm the notice in writing as soon as reasonably practicable.”.

(11) In article 45(1)(a)(xiii) (offences), for “article 39(1), (2) or (3)” substitute “article 39(1), (2), (3) or (4)”.

(12) In Schedule 1 (plant pests which shall not be landed in or spread within Scotland), in Part A (plant pests not known to occur in any part of the European Community), after item 15 of “Insects, mites and nematodes”, insert–

“**15a.** *Dryocosmus kuriphilus* Yasumatsu”.

(13) In Schedule 2 (relevant material which may not be landed in or moved within Scotland if that material is carrying or infected with plant pests), in Part B (plant pests known to occur in the European Community), in item 15 of “Viruses and virus-like organisms”, for “production” substitute “producers”.

(14) Insert “of” after “New Guinea hybrids”–

(a) in Schedule 2, in Part B, in item 15 of “Viruses and virus-like organisms”;

(b) in Schedule 6 (prohibitions on the landing in and movement within Scotland of relevant material, without a plant passport), in Part A (relevant material, from Scotland or elsewhere in the European Community, which may only be landed or moved within Scotland if accompanied by a plant passport), in paragraph 7(a); and

(c) in Schedule 7 (prohibitions on the consignment of relevant material to another part of the European Community without a plant passport), in Part A (relevant material which may only be consigned to another part of the, European Community if accompanied by a plant passport), in paragraph 7(a).

(15) In Schedule 3 (relevant material which may not be landed in Scotland if that material originates in certain third countries) in the third column of item 8 after “Algeria,” insert “Bulgaria,”.

(16) In Schedule 4 (restrictions on the landing in and movement within Scotland of relevant material), in Part A (relevant material, from third countries, which may only be landed in Scotland if special requirements are satisfied)–

(a) in the third column of item 6, for “items 5, 60, 61 and 64,” substitute “items 5, 6a, 60, 61, and 64.”;

(b) after item 6 insert–

“6a           Plants, other than fruit or seeds, of *Castanea* Mill., intended for planting, originating in any third country

Without prejudice to the requirements in items 5, 6, 51, 55, 60 and 61, the plants shall be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which states under the rubric “Additional declaration” that they have been grown throughout their life in places of production–

(a) in countries where *Dryocosmus kuriphilus* Yasumatsu is not known to occur; or

- (b) in an area or areas, established by the national plant protection organisation in the country of origin, as being free from *Dryocosmus kuriphilus* Yasumatsu, in accordance with ISPM No. 4, and that area shall be mentioned in the phytosanitary certificate or phytosanitary certificate for re-export under the rubric “Place of origin”;
- (c) in the second column of item 10, for “continents” substitute “continent”;
- (d) for the wording in the third column of item 12, substitute–  
 “Without prejudice to the requirements in items 19, 21 to 23, 27 to 30, 60, 61 and 64, the plants shall be accompanied by an official statement that they originate in a country known to be free from *Monilinia fructicola* (Winter) Honey”;
- (e) in the third column of item 15–
  - (i) after “(all strains pathogenic to *Citrus*)” in paragraph (a), insert “as referred to in Article 1(1) of Decision 2006/473/EC”; and
  - (ii) after “(all strains pathogenic to *Citrus*)” in paragraph (b), insert “as referred to in Article 1(2) of Decision 2006/473/EC”;
- (f) in the third column of item 16, after “Carv. et Mendes” in paragraph (a), insert “as referred to in Article 2 of Decision 2006/473/EC”;
- (g) in the third column of item 17–
  - (i) after “(all strains pathogenic to *Citrus*)” in paragraph (a), insert “as referred to in Article 3(1) of Decision 2006/473/EC”; and
  - (ii) after “(all strains pathogenic to *Citrus*)” in paragraph (b), insert “as referred to in Article 3(2) of Decision 2006/473/EC”;
- (h) in the third column of item 29, after “vegetation” in paragraph (b), for “and” substitute “or”; and
- (i) in the second column of item 37, after “*Solanaceae*,” insert “intended for planting,”.

(17) In Schedule 4 (restrictions on the landing in and movement within Scotland of relevant material), Part B (relevant material, from another part of the European Community, which may only be landed in or moved within Scotland if special requirements are satisfied)–

- (a) in the third column of item 4, for “The plants shall be accompanied by an official statement that”, substitute “Without prejudice to the requirements in item 4(a), the plants shall be accompanied by an official statement that”; and
- (b) after item 4 insert–

“4a

Plants, other than fruit or seeds, of *Castanea* Mill., intended for planting

Without prejudice to the requirements in item 4, the plants shall be accompanied by an official statement that–

- (a) they have been grown throughout their life or since their introduction into the Community in a place of production in a member State where *Dryocosmus*

*kuriphilus* Yasumatsu  
is not known to occur;  
or

- (b) they have been grown throughout their life or since their introduction into the Community in a place of production in an area or areas, established by the responsible official body in a member State, as being free from *Dryocosmus kuriphilus* Yasumatsu, in accordance with ISPM No. 4”.

(18) In Schedule 5 (relevant material from a third country for which a phytosanitary certificate may be required)–

- (a) in Part A (relevant material which may only be landed in Scotland if accompanied by a phytosanitary certificate), in paragraph 1(c), for “*Capsicum* spp. *Helianthus annuus* L., *Lycopersicon lycopersicum* (L.) Karsten ex Farw.,” substitute “*Solanaceae*, *Helianthus annuus* L.”; and
- (b) in Part B (relevant material which, if destined for certain protected zones, may only be landed in Scotland if accompanied by a phytosanitary certificate), in paragraph 2, after “6”, insert “of Part A”.

(19) In Schedule 6 (prohibitions on the landing in and movement within Scotland of relevant material without a plant passport), Part A (relevant material for Scotland or elsewhere in the European Community, which may only be landed in or moved within Scotland if accompanied by a plant passport), in paragraph 1, and in Schedule 7 (prohibitions on the consignment of relevant material to another part of the European Community without a plant passport), in Part A, in paragraph 1 (relevant material which may only be consigned to another part of the European Community if accompanied by a plant passport), after “*Amelanchier* Med.,” insert “*Castanea* Mill.”.

(20) In Schedule 6, Part A, in paragraph 7(a) and in Schedule 7, Part A, in paragraph 7(a), omit “*Castanea* Mill.”.

(21) In Schedule 6, Part A, in paragraph 7(d) and in Schedule 7, Part A, in paragraph 7(d), omit “certified”.

(22) In Schedule 8 (Swiss plant passports), Part B (relevant material imported into Switzerland from another third country, which, if it would normally be permitted to be landed in Scotland if accompanied by a phytosanitary certificate, may be accompanied by a Swiss plant passport), for paragraph 1 substitute–

“1. Plants, other than seeds, intended for planting, other than–

- (a) *Clausena* Burm. F. or *Murraya* Koenig ex L.; and
- (b) *Palmae* (not including *Phoenix* spp.) originating in Algeria or Morocco.”.

(23) In Schedule 9 (requirements for plants passports), in Part A (requirements for plant passports for any relevant material in Schedule 6 or 7), in paragraph 7(i), for “the registration number of” substitute “a code for”.

(24) In Schedule 17 (*Ralstonia solanacearum*), in Part B (demarcation of zones for the control of *Ralstonia solanacearum*), in paragraph 1, after “shall” on the first occasion where it occurs, insert “, where it is considered necessary to ensure that any provision of paragraph 6 is complied with,”.

St Andrew’s House,  
Edinburgh  
21st September 2006

*ROSS FINNIE*  
A member of the Scottish Executive

## 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–

- (a) Commission Directive 2005/77/EC amending Annex V to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread in the Community (O.J. No. L 296, 12.11.05, p.17);
- (b) Commission Decision 2005/870/EC recognising Bulgaria as being free from *Clavibacter michiganensis* (Smith) Davis *et al.* spp *sepedonicus* (Spieckerman and Kotthoff) Davis *et al.* (O.J. No. L 319, 7.12.05, p.9);
- (c) Commission Directive 2006/35/EC amending Annexes I to IV to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (O.J. No. L 88, 25.3.06, p.9);
- (d) Commission Decision 2006/473/EC recognising certain third countries and areas as being free from *Xanthomonas campestris* (all strains pathogenic to *Citrus*), *Cercospora angolensis* Carv. et Mendes and *Guignardia citricarpa* Kiely (all strains pathogenic to *Citrus*) (O.J. No. L 187, 8.7.06, p.35); and
- (e) Commission Decision 2006/464/EC on provisional emergency measures to prevent the introduction into and the spread within the Community of *Dryocosmus kuriphilus* Yasumatsu (O.J. No. L 183, 5.7.06, p.29).

The Order also makes minor amendments to the principal Order.

The main changes which this Order makes to the principal Order are to–

- (a) amend and insert certain definitions (article 2(2));
- (b) amend the matters as to which an inspector has to be satisfied before the inspector can discharge from an area of plant health control any material which is destined for a protected zone in Annex IB or Annex IIIB of Directive 2000/29 (article 2(4));
- (c) amend the local movement exemption to make it a discretionary exemption which takes account of plant health risk (article 2(5));
- (d) require certain commercial users of plant material to retain plant passports for one year (article 2(6));
- (e) amend the provision for authorising the granting of plant passports to enable a registered plant trader to issue passports for the movement of relevant material from any premises (article 2(7));
- (f) amend the requirements to notify pests to make it clear that the obligation to confirm a notice in writing only applies where that notice was given orally (article 2(9) and (10));
- (g) make it an offence to fail to comply with any of article 39(1) to (4) of the principal Order (article 2(11));
- (h) prohibit the landing in and spread within Scotland of *Dryocosmus kuriphilus* Yasumatsu and impose additional requirements on the landing and movement of *Castanea* Mill intended for planting (article 2(12), (16)(a) and (b) and (17));
- (i) exempt tubers of *Solanum* L. which originate in Bulgaria from the prohibition on landing in Scotland (article 2(15));
- (j) amend the provisions relating to countries and areas recognised as free from *Xanthomonas campestris*, *Cercospora angolensis* and *Guignardia citricarpa* (article 2(16)(d) to (h));

- (k) require seeds of all *Solanaceae* to be accompanied by a phytosanitary certificate (article 2(18));
- (l) require all seeds of *Helianthus annuus* L., *Lycopersicon lycopersicum* (L.) Karsten ex Farw. and *Phaseolus* L., to be accompanied by a plant passport (article 2(21));
- (m) reinstate the requirement for certain plants coming from Switzerland to be accompanied by a phytosanitary certificate (article 2(22)); and
- (n) limit the circumstances in which the Scottish Ministers are required to publish the demarcation of zones for the control of *Ralstonia solanacearum* (article 2(24)).

A transposition note has been prepared and placed before the Scottish Parliament. Copies of the transposition note can be obtained from SEERAD, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY. A full regulatory impact assessment has not been produced for this Order as it has no impact on the costs for business.

£3.00

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under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland  
100 09/06 19593