EXECUTIVE NOTE

THE PLANT HEALTH (POTATOES) (SCOTLAND) AMENDMENT ORDER 2010

SSI 2010/99

Introduction

1. The above instrument is made by the Scottish Ministers in exercise of powers conferred by sections 3(1) to 3(4) and 4(1) of the Plant Health Act 1967 as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972, and all other powers enabling them to do so. The instrument is to be laid after making but is not subject to Parliamentary procedure

Policy Objective

2. The purpose of this Order is to amend the Plant Health (Potatoes) (Scotland) Order 2006 ('the principal Order') which contains measures to prevent the spread of disease within Scotland's potato industry. The amendments introduce provisions to deal with a new pathogen, *Dickeya* spp., and strengthen the powers available to inspectors to enforce the notification of potatoes for planting. Other, minor, amendments are to make the principal Order more consistent with the Plant Health (Scotland) Order 2005 ("the Plant Health Order").

Legislative background

3. The Plant Health Order contains wide-ranging provisions to prevent the introduction and spread of pests and diseases which could damage Scottish agricultural and horticultural crops and the wider environment. It deals mainly with organisms which are listed in the European Council Plant Health Directive, 2000/29/EC. The Plant Health (Potatoes) (Scotland) Order 2006 was introduced to provide additional protection for potato crops against pests which are not covered by the European Plant Health Directive, using a similar framework of powers.

Policy background

4. Potatoes are an important crop for Scotland, representing around 8% of total agricultural output. Scottish seed potatoes, in particular, have an international reputation for high plant health status; they underpin GB production and are exported to over 27 countries.

5. The Scottish Government works in partnership with the potato industry to maintain Scotland's high plant health status. Measures required by the Plant Health Directive, and a voluntary ban on non-Scottish seed, have kept Scotland free of key quarantine pests of potato, such as Brown Rot and Ring Rot. Many other diseases are managed by growers using best practice in cultivation and storage. The principal Order gives inspectors additional powers to help growers by preventing the spread of viruses and blight from neighbouring crops or potato dumps, and information on the location of all potato crops to enable swift action to be taken in the event of any outbreak of disease.

A: *Dickeya* spp.

6. *Dickeya* spp. are a family of bacteria which cause wilting and blackleg in various crops around the world. A new and very aggressive species has recently been identified as the cause of severe blackleg and tuber soft rots in parts of Europe and Israel. A small number of crops grown in Scotland in 2009 from foreign seed were found to be infected, and measures have been taken to prevent any spread or contamination from these crops. Bacterial infections are generally spread by contact with infected material, either directly or via contaminated machinery, storage containers etc.

7. The new species has not yet been officially named, although "*Dickeya solani"* has been suggested. Other *Dickeya* species also have the potential to infect potatoes, with more or less damaging effects depending on the conditions, and further new strains may be identified in future. For this reason, the Order applies to all species in this family.

8. Article 4 inserts a new article 4A into the principal Order, giving inspectors powers to check for the presence of *Dickeya* spp. in the growing crop or in harvested tubers, waste and associated soil at any stage of processing. If the inspector suspects that infection is present, they may take samples for laboratory confirmation and serve a notice requiring whatever action is necessary to prevent the infection spreading.

9. Article 6(b) applies the provisions of article 6 of the principal Order to the new article 4A, relating to the service of notices.

B: Statutory notification of potatoes for planting

10. Article 3 of the principal Order requires potato growers to inform Scottish Ministers of all potatoes they plant, within 28 days of planting. This information can be used in the event of an outbreak of disease, to identify crops in the vicinity of the outbreak or related to the infected crop. If the information is not provided, inspectors can serve a notice requiring it, but they currently have no further options for enforcement, other than prosecution.

11. Article 7(a) amends article 8 of the principal Order to provide that in the circumstances where a person has failed to comply with a notice an inspector may enter premises where documents are kept and take such steps as appear to be necessary to ensure compliance with the notice, eg. to obtain the required information by examining the grower's records. It also amends the description of premises that may be entered to ensure compliance with a notice to include premises relevant to the new article 4A. In addition, the new article 8(1A) allows inspectors access to computer records.

C: Additional amendments

12. In scrutinising the principal Order, the Subordinate Legislation Committee made a number of comments on the drafting and *vires* of some provisions. Amendments are made in this order to address those issues.

13. The Subordinate Legislation Committee also queried why the power in article 9 to apply to the court for a warrant for entry (for the purpose of inspection) did not also extend to the powers of entry in article 8 (to enforce a notice). At that time the Scottish Government undertook to correct this omission in due course. However, having reconsidered this provision we now believe

it is inappropriate to provide for warrants of entry generally. In most cases the "premises" to be entered are fields or potato stores and grading sheds. Inspectors do not require warrants to enter such areas in exercising their powers under the Plant Health Order, and there is no obvious reason for this to be different in the current Order. Instead, article 8 amends article 9 of the principal Order to provide for warrants where the premises to be entered are used wholly or mainly as a dwelling. This matches the Plant Health Order and is particularly relevant in light of the new power to examine records, since many farm businesses have their office in the farmhouse.

Impact

14. The provisions of this Order do not impose any new burdens on businesses therefore no Regulatory Impact Assessment has been carried out.

Scottish Government
Rural Directorate

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