SCOTTISH STATUTORY INSTRUMENTS

2005 No.73

PLANT HEALTH

The Potatoes Originating in the Netherlands (Notification) (Scotland) Order 2005

Made - - - -	*17th February 2005*
Laid before the Scottish Parliament	*18th February 2005*
Coming into force - -	*14th March 2005*

The Scottish Ministers, in exercise of the powers conferred by sections 2(1) and (2), 3(1), (2) and (4) 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, commencement and extent

1.—(1) This Order may be cited as the Potatoes Originating in the Netherlands (Notification) (Scotland) Order 2005 and shall come into force on 14th March 2005.

(2) This Order extends to Scotland only.

Interpretation

2.—(1) In this Order–

"the principal Order" means the Plant Health (Great Britain) Order 1993(**c**);

"inspector" means any person authorised by the Scottish Ministers to be an inspector for the purposes of the principal Order;

"Dutch potato" means any potato which is imported and which the person importing it knows or has reasonable cause to suspect to have been grown in the Kingdom of the Netherlands during the year 2004 or subsequently;

"potato" means any tuber or true seed or any other plant of *Solanum tuberosum* L. or other tuber-forming species or hybrid of the genus *Solanum* L.; and

"Dutch seed potato" means any Dutch potato intended for planting.

(2) A reference in this Order to anything done in writing or produced in written form, including the service of a notice by virtue of article 4 below in exercise of a power conferred by article 22(1) or (2) of the principal Order, includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(**d**) which has been recorded and is consequently capable of being reproduced.

(**a**) 1967 c.8; sections 2(1), 3(1) and (2) were amended by the European Communities Act 1972 (c.68), section 4(1), Schedule 4, paragraph 8; section 3(4) was substituted by section 42 of the Criminal Justice Act 1982 (c.48); 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).
(**b**) 1972 c.62.
(**c**) S.I. 1993/1320; relevant amending instruments are S.I. 1995/1358, 1998/2245 and S.S.I. 1999/22.
(**d**) 2000 c.7.

(3) In this Order, where reference is made to provisions in the principal Order, those provisions shall be interpreted in accordance with article 2(1) of that Order.

Notification of imports

3.—(1) No person shall on or after 16th March 2005 import Dutch potatoes or Dutch seed potatoes into Scotland, unless that person has given written notification to an inspector, at least 48 hours prior to the intended date of introduction into Scotland of the potatoes, of that person's intention to import the potatoes and of–

(a) the proposed time, date and means of introduction;

(b) the proposed point of entry;

(c) the intended use of the potatoes;

(d) the proposed destination of the potatoes;

(e) the variety of the potatoes;

(f) the quantity of potatoes; and

(g) the producer's identification number.

(2) Any person who, on or after 1st September 2004 and before 16th March 2005, imports Dutch seed potatoes into Scotland shall, no later than 31st March 2005, give written notification to an inspector of–

(a) the date the potatoes were imported;

(b) the point of entry;

(c) the use or intended use of the potatoes;

(d) the destination or proposed destination of the potatoes;

(e) the variety of the potatoes;

(f) the quantity of potatoes; and

(g) the producer's identification number.

Powers of an inspector

4.—(1) The provisions of this article are without prejudice to the circumstances in which an inspector may by virtue of the principal Order exercise the powers conferred by that Order.

(2) On having reasonable grounds for suspecting a contravention or likely contravention of article 3 above, an inspector may, for the purpose of this Order, exercise–

(a) the powers conferred by article 22(1) of the principal Order as read with article 24(1) to (3) of the principal Order, as if a Dutch potato was a plant landed or likely to be landed in contravention of the principal Order; and

(b) the powers conferred by article 22(2) of the principal Order as read with article 24(1) to (3) of the principal Order, as if a Dutch potato was a plant kept or moved in contravention of the principal Order.

(3) Any notice served by virtue of this article in exercise of a power conferred by article 22(1) or (2) of the principal Order shall have effect as if served under article 22(1) or (2) of the principal Order, and articles 24(4) to (6), 26 to 28, 32 and 33(1), (2) and (6) of the principal Order shall apply accordingly.

(4) An inspector may, for the purposes of checking compliance with this Order, exercise the powers conferred by article 25(1)(a) to (c) and (2) of the principal Order, as if checking compliance with the principal Order.

(5) Any power conferred by article 25 of the principal Order which is exercised by virtue of this article shall be treated as if that power had been exercised under the principal Order, and articles 28 and 33(1)(a) and (c), (2) and (6) of the principal Order shall apply accordingly.

ROSS FINNIE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
17th February 2005

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which extends to Scotland only, places certain notification requirements upon persons who import potatoes which have been grown in the Kingdom of the Netherlands during 2004 or subsequently. The Order requires persons who import such potatoes into Scotland on or after 16th March 2005 to give at least 48 hours prior written notice to an inspector authorised by the Scottish Ministers, providing specified information as to the landing and intended use of the potatoes (article 3(1)).

From the coming into force date, any person who has imported Dutch seed potatoes into Scotland on or after 1st September 2004 but before 16th March 2005 must by 31st March 2005 provide specified information of a similar nature to an inspector (article 3(2)).

The Order provides that an inspector who has reasonable grounds for suspecting that article 3 of the Order has been or is likely to be contravened may exercise certain enforcement powers conferred by article 22 of the Plant Health (Great Britain) Order 1993 ("the principal Order") (article 4(2)). Any notice served or power exercised under article 4 of this Order, where the power to do so is conferred by the principal Order, has the same effect as if served or exercised under the relevant article of the principal Order (article 4(3) and (5)). Accordingly, once a notice is served or other power is exercised under article 4 of the Order, the relevant consequential provisions of the principal Order, including provisions as to offences, take effect, including the power to recover costs for failure to comply with the notice.

An inspector may check that the provisions of the Order have been complied with by exercising certain powers conferred by article 25 (excluding article 25(1)(d)) of the principal Order (for example, by examining, sampling and marking premises) (article 4(4)).

No Regulatory Impact Assessment has been prepared in respect of this Order.

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