

2012 No. 37

PLANT HEALTH

**The Potatoes Originating in Egypt (Scotland) Amendment
Regulations 2012**

Made - - - - *9th February 2012*

Laid before the Scottish Parliament *13th February 2012*

Coming into force - - *21st March 2012*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for references to Commission Implementing Decision (EU) No 2011/787 authorising Member States temporarily to take emergency measures against the dissemination of *Ralstonia solanacearum* (Smith) Yabuuchi et al. as regards Egypt(b), to be construed as references to that Decision as amended from time to time.

Citation and commencement

1. These Regulations may be cited as the Potatoes Originating in Egypt (Scotland) Amendment Regulations 2012 and come into force on 21st March 2012.

Amendments to the Potatoes Originating in Egypt (Scotland) Regulations 2004

2.—(1) The Potatoes Originating in Egypt (Scotland) Regulations 2004(c) are amended in accordance with paragraphs (2) to (8).

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), section 3(3) and Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, section 3(3) and Schedule, Part 1.

(b) OJ L 319, 2.12.2011, p.112.

(c) S.S.I. 2004/111, relevantly amended by S.S.I. 2007/94.

(2) In regulation 2(1) (interpretation)—

(a) for the definition of “the Decision” substitute—

““the Decision” means Commission Implementing Decision (EU) No 2011/787 authorising Member States temporarily to take emergency measures against the dissemination of *Ralstonia solanacearum* (Smith) Yabuuchi et al. as regards Egypt, as amended from time to time;”;

(b) after the definition of “originating in Egypt” insert—

““pest-free area” means an area of Egypt which, at the time of import, is included on the list of pest-free areas conveyed by the European Commission to Member States of the European Union for the purposes of Article 1.2 or 1.3 of the Decision;” and

(c) for the definition of “phytosanitary certificate” substitute—

““phytosanitary certificate” means a certificate which complies with the relevant requirements of articles 7 and 15 of the Order and, in addition, the requirements of point 2.2(c) of the Annex to the Decision;”.

(3) For regulation 3 substitute—

“Imports of potatoes originating in Egypt

3.—(1) No person may import into Scotland any potatoes which that person knows or has reasonable cause to suspect originated in Egypt in an area other than a pest-free area.

(2) No person may import into Scotland any potatoes which were grown in a pest-free area unless those potatoes are accompanied by a phytosanitary certificate.

(3) The requirement imposed by item 35a of Part A of Schedule 4 to the Order (an official statement that the tubers originate in areas in which *Pseudomonas solanacearum* (Smith) Smith is not known to occur)(a) does not apply to imports of potatoes originating in Egypt.”.

(4) In regulation 4 (approval of premises which process potatoes originating in Egypt), after paragraph (2) insert—

“(2A) It is a condition of any approval granted pursuant to paragraph (1) that potatoes originating in Egypt must, following treatment, be labelled to indicate their origin.”.

(5) In regulation 5 (powers of an inspector)—

(a) in paragraph (2), after “regulation 3(1)” insert “or (2)”; and

(b) in paragraph (3), after “regulation 4(1)” insert “or (2A)”.

(6) In regulation 6 (charges in respect of the sampling of imports of potatoes)—

(a) in paragraph (1), for “paragraph 3” substitute “point 5”; and

(b) in paragraph (2), for “paragraph 1(a)” substitute “point 1”.

(7) For regulation 7 substitute—

“Offences

7.—(1) A person commits an offence if, without reasonable excuse, he or she contravenes or fails to comply with regulation 3(1), 3(2) or 4(1).

(2) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

(a) Item 35a was inserted by S.S.I. 2009/153, article 7(1)(c). *Ralstonia solanacearum* (Smith) Yabuuchi et al. is also known as *Pseudomonas solanacearum* (Smith), see recital (1) of the Decision.

(8) After regulation 7 (offences) , insert—

“Offences by bodies corporate

7A.—(1) Where—

- (a) an offence under these Regulations is committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1) “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner; and
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.”.

Revocation

3. Regulation 2(2)(a) and (c) and (4) of the Potatoes Originating in Egypt (Scotland) Amendment Regulations 2007(**a**) are revoked.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
9th February 2012

(a) S.S.I. 2007/94.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in Scotland Commission Implementing Decision (EU) No 2011/787 authorising Member States temporarily to take emergency measures against the dissemination of *Ralstonia solanacearum* (Smith) Yabuuchi et al. as regards Egypt (“the Decision”). The Decision repeals and replaces Commission Decision (EC) No 2004/4 (OJ L 2, 6.1.2004, p.50).

These Regulations amend the Potatoes Originating in Egypt (Scotland) Regulations 2004 (the “principal Regulations”) to implement the Decision.

These Regulations amend regulation 2 of the principal Regulations to—

- substitute a new definition of “the Decision” (regulation 2(2)(a));
- insert a definition of “pest-free area” (regulation 2(2)(b)); and
- substitute a new definition of “phytosanitary certificate” (regulation 2(2)(c)).

The Regulations substitute regulation 3 of the principal Regulations to prohibit the import of potatoes into Scotland other than from a pest-free area of Egypt and only where they are accompanied by a phytosanitary certificate (regulation 2(3)).

The Regulations amend regulation 4 of the principal Regulations, which deals with the approval of premises for the treatment of Egyptian potatoes, to include the requirement to label potatoes to indicate their Egyptian origin (regulation 2(4)).

The Regulations also make changes to regulation 5 (powers of an inspector) in consequence of the substitution of regulation 3 and the amendment of regulation 4 of the principal Regulations (regulation 2(5)).

The Regulations update references to the Decision in regulation 6 of the principal Regulations, in respect of the power to charge for sampling of potatoes (regulation 2(6)).

They also make some drafting changes to the offence provision at regulation 7 of the principal Regulations, to reflect modern drafting practice and also in consequence of the substitution of regulation 3 of the principal Regulations (regulation 2(7)).

The Regulations introduce a new regulation 7A in relation to offences committed by bodies corporate (regulation 2(8)).

They also revoke obsolete provisions of the Potatoes Originating in Egypt (Scotland) Amendment Regulations 2007, in consequence of the substitution of the definitions of “the Decision” and “phytosanitary certificate” and of regulation 3 of the principal Regulations (regulation 3).

No Business and Regulatory Impact Assessment has been prepared for these Regulations.

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