
STATUTORY INSTRUMENTS

2004 No. 2590

**The Plant Health (Phytophthora ramorum)
(England) Order 2004 (revoked)**

Title, commencement, extent and application

1.—(1) This Order may be cited as the Plant Health (*Phytophthora ramorum*) (England) Order 2004 and shall come into force on 29th October 2004.

(2) This Order extends to England and Wales but applies only in relation to England.

Interpretation

2. In this Order—

“European Community” has the same meaning as in the principal Order;

“inspector” means any person authorised to be an inspector for the purposes of the principal Order;

“origin” means, in respect of susceptible material, the place where the material is grown or produced, and “originating” shall be construed accordingly;

“*Phytophthora ramorum*” refers to the pest *Phytophthora ramorum* Werres, De Cock & Man in 't Veld sp. nov;

“phytosanitary certificate” means a certificate duly completed either—

- (a) in the form set out in Schedule 14 of the principal Order; or
- (b) the equivalent in a language other than English;

“place of production” has the same meaning as in the principal Order;

“plant” has the same meaning as in the principal Order;

“plant passport” means either—

- (a) a label and, where appropriate, an accompanying document, issued in the European Community containing the relevant information in Schedule 9 which gives evidence that the provisions of this Order relating to plant health standards and special requirements for plants and plant products moving within the European Community have been complied with, or
- (b) except for the purposes of article 8(1), a Swiss plant passport;

“plant product” means a product of plant origin, which is unprocessed or has undergone simple preparation insofar as it is not a plant;

“premises” has the same meaning as in the principal Order;

“the principal Order” means the Plant Health (Great Britain) Order 1993(1);

“reforwarding phytosanitary certificate” means a certificate duly completed either—

- (a) in the form set out in Schedule 15 of the principal Order; or

(1) S.I.1993/1320; amended by S.I. 1993/3213, 1995/1358 and 2929, 1996/25, 1165 and 3242, 1997/1145 and 2907, 1998/349, 1121 and 2245 and 1999/2126 and 2726, 2001/2343, 2002/1067, 2003/1157 and 2004/2365.

Status: Point in time view as at 29/10/2004.

Changes to legislation: There are currently no known outstanding effects for the The Plant Health (*Phytophthora ramorum*) (England) Order 2004 (revoked). (See end of Document for details)

- (b) the equivalent in a language other than English;
- “susceptible tree” means a tree, excluding fruit or seeds, of the species and genera listed in the first column of Schedule 1;
- “susceptible material” means—
- (a) in the case of material originating in the United States of America (“USA”), plants, other than fruit or seeds, of the species and genera listed in the first column of Schedule 1, and
- (b) in all other cases, plants, other than seeds, intended for planting of *Camellia* spp., *Rhododendron* spp. L., other than *Rhododendron simsii* Planch., and *Viburnum* spp. L.;
- “Swiss plant passport” means a label and, where appropriate, an accompanying document, issued in Switzerland in accordance with Swiss legislation which—
- (a) contains information which gives evidence that the legislation in Switzerland relating to plant health standards and special requirements for plants and plant products moving into and within Switzerland have been complied with; and
- (b) relates to a plant intended for planting of *Camellia* spp., *Rhododendron* spp. L., other than *Rhododendron simsii* Planch. or *Viburnum* spp. L.;
- “third country” has the same meaning as in the principal Order; and
- “tree” has the same meaning as in the Plant Health (Forestry) (Great Britain) Order 1993(2).

Prohibition against the introduction and spread of *Phytophthora ramorum* into and within England

3. Subject to article 11, no person shall—
- (a) introduce *Phytophthora ramorum* into England; or
- (b) spread *Phytophthora ramorum* within England.

Imports of susceptible material originating in the USA

4. Subject to article 11, no person shall import(3) into England susceptible material originating in the USA unless—
- (a) it is—
- (i) accompanied by a phytosanitary certificate issued in accordance with the requirements of Schedule 1 or, in the case of material for which a reforwarding phytosanitary certificate has also been issued, a certified copy of the phytosanitary certificate; and
- (ii) found free from *Phytophthora ramorum* upon examination by an inspector; or
- (b) in the case of imports from Switzerland of plants, other than seeds, intended for planting of *Camellia* spp., *Rhododendron* spp. L., other than *Rhododendron simsii* Planch., and *Viburnum* spp. L., the material is accompanied by a Swiss plant passport.

Movement of susceptible material originating in third countries

- 5.—(1) Subject to paragraph (2) and article 11, where susceptible material originating in the USA or in any other third country has been imported into England, no person shall move that material—

(2) S.I. 1993/1283, to which there are amendments not relevant to this Order.

(3) Section 49 of the Customs and Excise Management Act 1979 (c. 2) provides for forfeiture of goods improperly imported, landed or unloaded. Section 50 makes it an offence to import, land or unload goods with intent to evade the prohibition contained in this article.

- (a) within England;
- (b) to another part of the United Kingdom;
- (c) to the Isle of Man or the Channel Islands;
- (d) to another member State; or
- (e) in the case of plants, other than seeds, intended for planting of *Camellia* spp., *Rhododendron* spp. L., other than *Rhododendron simsii* Planch., and *Viburnum* spp. L., to Switzerland,

unless it is accompanied by a plant passport.

(2) Paragraph (1) shall not apply in the case of movement of susceptible material within England where such movement is in compliance with a notice served under article 12.

Movement of susceptible material originating in England and elsewhere in the European Community or Switzerland

6.—(1) Subject to article 11, no person shall move into England susceptible material originating—

- (a) elsewhere in the United Kingdom;
- (b) in another member State;
- (c) in the Isle of Man or Channel Islands; or
- (d) in the case of plants, other than seeds, intended for planting of *Camellia* spp., *Rhododendron* spp. L., other than *Rhododendron simsii* Planch., and *Viburnum* spp. L., in Switzerland,

unless it is accompanied by a plant passport and meets the requirements of Schedule 2.

(2) No person acting in the course of a trade, business or other undertaking shall move susceptible material produced in England from its place of production unless the material is accompanied by a plant passport and meets the requirements of Schedule 2.

Registered producers

7.—(1) Subject to paragraph (4), no person who produces susceptible material may move that material unless he is registered as a producer pursuant to articles 15 and 16 of the principal Order or paragraph (2) of this article.

(2) A producer of susceptible material who is not registered as a producer under the principal Order—

- (a) may apply for registration under articles 15 and 16 of the principal Order as if his application were provided for by that Order;
- (b) shall meet the requirements of articles 15 and 16 of the principal Order as if his application had been made under that Order; and
- (c) shall be treated by the Secretary of State, in respect of such an application and any consequent registration, as if the application were provided for by the principal Order.

(3) Any person who is registered as a producer in accordance with paragraph (1) shall notify any suspected occurrence or confirmed presence of *Phytophthora ramorum* at the place of production to which their registration relates.

(4) This article shall not apply to persons who produce susceptible material or who move susceptible material which they have produced if they do so other than in the course of a trade, business or other undertaking.

Plant passports

8.—(1) The following articles of the principal Order shall apply in respect of a plant passport required under articles 5 or 6, as appropriate, of this Order—

- (a) article 11(3), as if—
 - (i) a phytosanitary certificate had been issued in respect of susceptible material which complied with this Order; and
 - (ii) reference to “Part A of Schedule 5” of the principal Order were to article 5 of this order;
- (b) article 14(1), as if the plant passport were issued in respect of susceptible material; and
- (c) article 14(2) to (8).

(2) Subject to paragraph (4), a person who holds the Secretary of State’s authority under article 17 of the principal Order to produce, store and issue plant passports on behalf of a business is also authorised under this Order to produce, store and issue plant passports required under this Order on behalf of that business.

(3) A person not authorised under paragraph (2) may be authorised by the Secretary of State, subject to any conditions she sees fit, to produce, store and issue plant passports required under this Order on behalf of any business, individual or other organisation, if—

- (a) the person seeking authority is registered as a producer of susceptible material under article 7; and
- (b) a satisfactory inspection has been carried out by an inspector of the place of production of susceptible material in respect of which authority is sought, any part thereof or any other premises handling any susceptible material, for the purposes of ascertaining the plant health status of the susceptible material at that place or those premises in relation to *Phytophthora ramorum* and any plants or plant products there.

(4) Authority conferred upon a person under paragraphs (2) or (3) to produce, store and issue plant passports required under this Order may be withdrawn by an inspector where the inspector is satisfied that the provisions of this Order in respect of plant passports are not being met by that person.

Phytosanitary certificates

9.—(1) The following provisions of the principal Order shall apply to a phytosanitary certificate required under this Order—

- (a) article 12(1);
- (b) article 12(4) as if references to the principal Order were to this Order;
- (c) article 12(5) and (6);
- (d) article 12(7) as if susceptible material were “plants” within the meaning of that article; and
- (e) article 13.

(2) Where a consignment of susceptible material for which a phytosanitary certificate is required and has been issued pursuant to article 4 has been consigned to, stored, repacked or split up in a third country other than that in which the certificate was issued, the original phytosanitary certificate or a certified copy of it shall accompany the material together with a reforwarding phytosanitary certificate issued by the official plant health service of that third country.

Phytosanitary certificates or plant passports issued outside England

10.—(1) Any phytosanitary certificate issued for the purposes of this Order by or with the authority of an official plant health service of a third country shall be deemed to have been issued in accordance with the relevant requirements of Schedule 1.

(2) Any susceptible material for which a plant passport has been issued for the purposes of this Order or equivalent legislation in the country of issue by or with the authority of an official plant health service of a Member State or another part of the United Kingdom or the Channel Islands or Isle of Man, shall be deemed to meet the requirements of Schedule 2.

(3) Any susceptible material for which a Swiss plant passport has been issued by or with the authority of an official plant health service of Switzerland, shall be deemed to meet the requirements of Schedule 2.

Licences for scientific or research purposes

11.—(1) Subject to paragraph (2), the provisions of article 30A of the principal Order shall apply in respect of the importation, movement and keeping of *Phytophthora ramorum*, or any susceptible material on which *Phytophthora ramorum* is present, which would otherwise be prohibited under this Order as if it or the material were a plant pest, the importation, movement or keeping of which, but for a licence granted under the principal Order, would be prohibited.

(2) Nothing in paragraph (1) shall affect the application of article 30A(2)(d) of the principal Order in respect of a licence granted by virtue of this article.

Actions which may be required by an inspector

12.—(1) If an inspector has reasonable grounds for suspecting that *Phytophthora ramorum* is present or likely to be present on any premises, he may, for the purposes of enforcing article 3(b), by notice in writing served on the occupier or other person in charge of the premises or of the susceptible material—

- (a) require any of the susceptible material to be treated, destroyed or otherwise disposed of in such manner and within such reasonable time as may be specified in the notice;
- (b) prohibit the removal of the susceptible material from premises specified in the notice or impose such other prohibitions as appear to the inspector to be necessary to prevent the spread of *Phytophthora ramorum*;
- (c) require the removal of the susceptible material to premises specified in the notice in such manner and within such reasonable time as may be so specified; or
- (d) require the taking of such other steps, specified in the notice, in such manner and within such reasonable time as may be specified in the notice, as appear to the inspector to be necessary to prevent the spread of *Phytophthora ramorum*.

(2) If an inspector has reasonable grounds for believing that it is necessary for the purpose of preventing the spread of or ensuring the eradication of *Phytophthora ramorum* from any premises, he may by notice in writing served on the occupier or other person in charge of any other premises impose such prohibitions and require the taking of such reasonable steps, specified in the notice, as appear to him to be necessary for that purpose, such steps to be taken in such manner and in such reasonable time as may be specified in the notice.

(3) For the purposes of carrying out an examination of susceptible material upon its entry to England an inspector may, by notice in writing served on the consignee of any susceptible material which has been or is to be imported into England, specify premises and require the removal of that material to those premises in such manner and within such period as may be specified in the notice.

Actions which may be taken by an inspector

13.—(1) Without prejudice to the provisions in article 12, and subject to paragraph (3), if an inspector has reasonable grounds for suspecting that *Phytophthora ramorum* is present or likely to be present on any premises, he may after giving the occupier or other person in charge of the premises reasonable notice of his intention and upon production if so required of his authority enter such premises and either on those premises or elsewhere take steps—

- (a) to destroy or treat in some other way any susceptible material found on those premises; or
- (b) to destroy and to prevent the spread of *Phytophthora ramorum* found on those premises.

(2) Subject paragraph (3), an inspector may on production if so required of his authority at all reasonable times for the purpose of ascertaining whether *Phytophthora ramorum* exists on any premises, or for any other purpose of this Order, including checking compliance with it, enter any premises to—

- (a) examine, photograph or mark any part of the premises or any susceptible material or object on the premises;
- (b) take samples of any susceptible material or other object and anything which has been or may have been in contact with *Phytophthora ramorum*; or
- (c) require production of any documents or records (in whatever form they may be held) relating to the production of or trade in any susceptible material and may examine and copy such documents or records.

(3) The power to enter premises conferred by paragraphs (1) and (2) may be exercised in respect of premises used wholly or mainly as a dwelling only in accordance with a warrant granted under article 28 of the principal Order.

(4) An inspector may, for the purpose of the examinations referred to in paragraph (2), open, authorise any person to open on his behalf or require the owner or any person in charge of any such container, bundle or other package to open, in such manner as the inspector may specify, the container or other package.

(5) An inspector may, so far as it is necessary for the purposes of the examinations referred to in paragraph (2), prohibit entirely or to such extent as he may indicate the movement of any susceptible material, container, bundle, other package or object by means of which in his opinion *Phytophthora ramorum* may spread.

(6) For the purposes of the examinations referred to in paragraph (2), an inspector may require the occupier or other person in charge of the premises in which the examination is taking place to provide adequate lighting and, where appropriate, suitable areas for inspection.

(7) Where any such document or record as is mentioned in paragraph (2)(c) is kept by means of a computer, an inspector may—

- (a) require access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the documentation or records; and
- (b) require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material, to afford him such assistance as he may reasonably require.

(8) An inspector on entering any premises under paragraphs (1) or (2) of this article may take with him such other persons including, but not limited to, representatives of the European Commission, and such equipment and vehicles as are necessary for the purpose of facilitating the exercise of his powers under those paragraphs, and such other persons whether or not accompanied by the inspector, upon production if so required of their authority given in that behalf by an inspector, may remain on the land and from time to time re-enter with such equipment and vehicles as aforesaid, and carry out such work for the purposes aforesaid and in such manner as the inspector may direct.

Miscellaneous provisions as to notices and failure to comply with notices

14. The following provisions of the principal Order shall apply to a notice issued under articles 12 or 13, as appropriate, of this Order—

- (a) article 24, as if the references to article 22 of the principal Order were to article 12 of this Order and other references to the principal Order were to this Order;
- (b) article 26, as if the references to the principal Order were to this Order; and
- (c) article 27, subject to article 28 of the principal Order, as if the references to the principal Order were to this Order.

Offences

15.—(1) A person shall be guilty of an offence if, without reasonable excuse, proof of which shall lie on him—

- (a) he contravenes or fails to comply with articles 3 or 5;
- (b) he contravenes or fails to comply with a provision or condition of a notice served, or licence granted, under this Order; or
- (c) he intentionally obstructs an inspector or any person authorised by an inspector in the exercise of his powers given by or under this Order.

(2) A person shall be guilty of an offence if, for the purpose of procuring the authority to issue a plant passport under this Order, he—

- (a) makes a statement which he knows to be false in a material particular;
- (b) recklessly makes a statement which is false in a material particular; or
- (c) intentionally fails to disclose any material information.

(3) A person shall be guilty of an offence if he dishonestly issues a false plant passport under this Order.

(4) A person shall be guilty of an offence if he dishonestly alters a plant passport affixed to susceptible material or re-uses a plant passport for susceptible material which is not the material for which the plant passport was issued.

(5) A person guilty of an offence under this article shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Revocation

16. The Plant Health (*Phytophthora ramorum*) (England) (No. 2) Order 2002(4) is revoked.

Ben Bradshaw
Parliamentary Under Secretary of State,
Department for Environment, Food and Rural
Affairs

2nd October 2004

Status:

Point in time view as at 29/10/2004.

Changes to legislation:

There are currently no known outstanding effects for the The Plant Health (Phytophthora ramorum) (England) Order 2004 (revoked).