SCOTTISH STATUTORY INSTRUMENTS

2002 No. 483

PLANT HEALTH

The Plant Health (Phytophthora ramorum) (Scotland) (No. 2) Order 2002

Made - - - -	*29th October 2002*
Laid before the Scottish Parliament - - - -	*29th October 2002*
Coming into force - -	*1st November 2002*

The Scottish Ministers, in exercise of the powers conferred by sections 2, 3(1), (2)(b), (3) and (4) and 4(1)(b) of the Plant Health Act 1967(**1**) 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 Plant Health (*Phytophthora ramorum*) (Scotland) (No. 2) Order 2002 and shall come into force on 1st November 2002.

(2) This Order extends to Scotland only.

Interpretation

2. In this Order–

"European Community" has the same meaning as that given in article 2(1) of the principal Order;

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

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

"*Phytophthora ramorum*" means the pest *Phytophthora ramorum* Werres, De Cock & Man in 't Veld sp. nov;

(**1**) 1967 c. 8; sections 2(1) and 3(1) and (2) 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 amended by section 17(1) of the Criminal Justice Act 1991 (c. 53) and the Statute Law (Repeals) Act 1993, 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).

"phytosanitary certificate" means a certificate duly completed in the form set out in Schedule 14 to the principal Order and issued in compliance with the provisions of this Order;

"place of production" has the same meaning as that given in article 2(1) of the principal Order;

"plant" has the same meaning as that given in article 2(1) of the principal Order, save that seed and fruit in the botanical sense are excluded(**2**);

"plant passport" has the same meaning as that given in article 2(1) of the principal Order, save that references to the provisions of that Order are to be construed as if they were references to the provisions of this Order;

"the principal Order" means the Plant Health (Great Britain) Order 1993(**3**);

"reforwarding phytosanitary certificate" has the same meaning as that given in article 2(1) of the principal Order;

"susceptible forest material" means *Quercus* spp. L. and *Lithocarpus densiflorus* (H & A);

"susceptible material" means, in the case of material originating in the United States of America ("USA"), plants of the species and genera listed in the first column of Schedule 1, and in all other cases, plants of *Rhododendron* spp. L., other than *Rhododendron* simsii Planch., and *Viburnum* spp. L;

"third country" has the same meaning as that given in article 2(1) of the principal Order.

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

3. Subject to article 12, no person shall–

(a) introduce *Phytophthora ramorum* into Scotland(**4**); or

(b) spread *Phytophthora ramorum* within Scotland.

Imports of susceptible material originating in the USA

4. Subject to article 6, no person shall import into Scotland susceptible material originating in the USA unless–

(a) it is accompanied by a phytosanitary certificate issued in accordance with the requirements set out in the second column of Schedule 1 or a certified copy thereof in the case of material for which a reforwarding phytosanitary certificate has also been issued; and

(b) upon examination by an inspector, it is found to be free from *Phytophthora ramorum*(**5**).

Movement of susceptical material originating in the USA or any other third country

5. Subject to article 6, where susceptible material originating in the USA or in any other third country has been imported into Scotland, no person shall move that material–

(a) within Scotland;

(b) to another part of the United Kingdom;

(c) to the Isle of Man or the Channel Islands; or

(d) to another Member State,

(**2**) The definition of "plant" was amended by article 3(a) of S.I.1995/1358.
(**3**) 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, S.S.I. 1999/22 and 129, 2000/201, 2001/249 and 2002/164.
(**4**) Sections 49 and 50 of the Customs and Excise Management Act 1979 provide respectively for the forfeiture of goods improperly imported and for penalties for improper importation of goods.
(**5**) See footnote (a) above.

unless (subject to article 9(3) in the case of movement within Scotland) it is accompanied by a plant passport.

Exemptions from the requirements of articles 4 and 5

6. The requirements of articles 4 and 5 shall not apply to susceptible material originating in the USA which is despatched to the European Community from the USA before 1st November 2002.

Movement of susceptible material originating in Scotland and elsewhere in the European Community

7.—(1) No person shall move into Scotland susceptible material originating elsewhere in the United Kingdom, the Isle of Man or Channel Islands or another Member State unless it is accompanied by a plant passport and meets the requirements of Schedule 2(**6**).

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

Official registration

8.—(1) Subject to paragraph (3), no person who produces susceptible material may move that material unless that person is registered as a producer pursuant to articles 15 and 16 of the principal Order or to paragraph (2).

(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 the application were provided for by that Order;

(b) in so applying, shall meet the requirements of those articles as if the application had been made under the principal Order; and

(c) shall be treated by the Scottish Ministers, in respect of such an application and any consequent registration, as if the application were provided for by the principal Order.

(3) 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

9.—(1) The following provisions of the principal Order shall apply in respect of a plant passport required under articles 5 or 7, as appropriate:–

(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) the reference to "Part A of Schedule 5" of the principal Order were a reference to article 5 of this Order;

(b) article 14(1), as if the plant passport were issued in respect of susceptible material;

(c) article 14(2) to (8).

(2) For the purposes of carrying out an examination of susceptible material upon its entry into Scotland, an inspector may, by notice in writing served on the consignee of any susceptible material

(**6**) See footnote (a) above.

which has been or is to be imported into Scotland, 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.

(3) Movement of susceptible material in compliance with a notice served under paragraph (2) shall not constitute movement requiring a plant passport pursuant to article 5(a).

(4) Subject to paragraph (6), a person who holds the authority of the Scottish Ministers under article 17 of the principal Order to produce, store and issue plant passports on behalf of a business, individual or other organisation is also authorised under this Order to produce, store and issue plant passports required under this Order on behalf of that business, individual or other organisation.

(5) A person not authorised under this Order pursuant to paragraph (4) may be authorised by the Scottish Ministers, subject to any conditions they think 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 pursuant to article 8; 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.

(6) Authority conferred upon a person under paragraphs (4) or (5) to produce, store and issue plant passports required under this Order may be withdrawn by an inspector where that inspector is satisfied that the provisions of this Order in respect of plant passports are not being fulfilled by that person.

Phytosanitary Certificates

10.—(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 references to this Order;

(c) article 12(5) and (6);

(d) article 12(7), as if susceptible material were "a plant" within the meaning of the principal Order; 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 thereof shall accompany the consignment together with a reforwarding phytosanitary certificate issued by the official plant health service of that third country.

Implications of the issue of phytosanitary certificates or plant passports issued outside Scotland

11. Any phytosanitary certificate or plant passport issued for the purposes of this Order by or with the authority of an official plant health service of a third country, Member State, another part of the United Kingdom, the Channel Islands or Isle of Man, shall be deemed to have been issued in accordance with the relevant requirements of Schedules 1 and 2.