SCOTTISH STATUTORY INSTRUMENTS

2002 No. 223

PLANT HEALTH

The Plant Health (Phytophthora ramorum) (Scotland) Order 2002

Made - - - -	*9th May 2002*
Laid before the Scottish Parliament - - - -	*10th May 2002*
Coming into force - -	*13th May 2002*

The Scottish Ministers, in exercise of the powers conferred by sections 2, 3(1), (2)(b) 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) Order 2002 and shall come into force on 13th May 2002.

(2) This Order extends to Scotland only.

Interpretation

2.—(1) In this Order–

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

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

"phytosanitary certificate" means a certificate duly completed in the form set out in Schedule 14 to the principal Order and issued in compliance with articles 12(4) to (7) and 13 of the principal Order;

"plant" has the same meaning as that given in the principal Order;

(**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).

"the principal Order" means the Plant Health (Great Britain) Order 1993(**2**);

"susceptible American material" means, plants of the genera listed in the first column of the Schedule originating in the United States of America ("USA");

"susceptible material" means plants of all species of the genera *Rhododendron* and *Viburnum* originating anywhere.

(2) A reference in this Order to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(**3**) which has been recorded and is consequently capable of being reproduced.

Imports of susceptible American material from the USA

3. Subject to article 5(1), no person shall import from the USA into Scotland susceptible American material unless it is accompanied by a phytosanitary certificate fulfilling the requirements set out in the second column of the Schedule to this Order(**4**).

Notification of movements of susceptible material into and within Scotland

4.—(1) Subject to articles 5(2) and 6(1), any person in occupation of premises in Scotland who takes delivery at those premises of any susceptible material other than that despatched to that person from premises elsewhere in Scotland shall, within 72 hours of taking delivery of the material, provide to an inspector written notice stating the following information:–

(a) the date and means of delivery to the premises of that person;

(b) whether the susceptible material remains on the premises of that person and if so, the address of those premises;

(c) if the susceptible material has been forwarded to another destination, or it is intended so to forward it within 48 hours of the notice being given, the address to which it has been or will be forwarded, and the name of the intended recipient;

(d) the origin of the susceptible material, if known;

(e) the name and address of the producer, if known;

(f) the species and variety of the susceptible material; and

(g) the quantity of susceptible material.

(2) Subject to articles 5(2) and 6(1), any person in occupation of premises in Scotland who despatches from those premises any susceptible material to premises elsewhere in Scotland shall, within 24 hours of the day of despatch, provide to an inspector written notice stating the following information:–

(a) the date and means of despatch to the destination premises;

(b) the address of those premises and the name of the recipient;

(c) the origin of the susceptible material, if known;

(d) the name and address of the producer, if known;

(e) the species and variety of the susceptible material; and

(f) the quantity of susceptible material.

(**2**) 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.

(**3**) 2000 c. 7.

(**4**) See sections 49 and 50 of the Customs and Excise Management Act 1979 (c. 2) which provide respectively for forfeiture of goods improperly imported and penalties for improper importation of goods.

Exemptions

5.—(1) The requirements of article 3 shall not apply to susceptible American material which is accompanied by a phytosanitary certificate issued prior to 13th May 2002.

(2) The requirements of article 4 shall not apply to the despatch or taking of delivery by persons not acting in the course of any trade or business.

Powers of an inspector

6.—(1) An inspector–

(a) may dispense in writing with all or any of the requirements in article 4 for written notification if that inspector believes that notification otherwise given to that inspector has furnished sufficient information about any susceptible material the delivery or despatch of which falls under the provisions of this Order; and

(b) giving written dispensation pursuant to sub-paragraph (a) must, as soon as reasonably practical, post or otherwise deliver the written dispensation to the person obtaining the dispensation.

(2) An inspector may, for the purposes of checking compliance with this Order–

(a) exercise the powers conferred by article 25(1)(a) and (b) of the principal Order, as if checking compliance with the principal Order; and

(b) having entered premises by virtue of sub-paragraph (a), require production of documentation 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 documentation or records.

(3) Where documentation or records which require to be examined by an inspector pursuant to paragraph (2)(b) are kept by means of a computer, an inspector may–

(a) have access to any computer and any associated apparatus or material which is or has been in use in connection with the record; and

(b) require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material, to afford that inspector such assistance as that inspector may reasonably require.

(4) 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 the provisions of the principal Order (including article 33(1)(a) and (c), and (6) (offences)) shall apply accordingly.

Offences

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

(a) contravenes or fails to comply with article 4; or

(b) intentionally obstructs an inspector in the exercise of the powers of an inspector conferred by or under article 6(2)(b) or (3).

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.