WELSH STATUTORY INSTRUMENTS

2006 No. 1344 (W.134)

PLANT HEALTH, WALES

The Plant Health (Phytophthora ramorum) (Wales) Order 2006

Made - - - -	*16 May 2006*
Coming into force - -	*24 May 2006*

The National Assembly for Wales, in exercise of the powers conferred by sections 2, 3(1), (2)(b) and (4) and 4(1) of the Plant Health Act 1967(**1**) and now vested in the National Assembly for Wales(**2**), makes the following Order:

Title, commencement and application

1.—(1) The title of this Order is the Plant Health (*Phytophthora ramorum*) (Wales) Order 2006 and this Order comes into force on 24 May 2006.

(2) This Order applies in relation to Wales.

Interpretation

2. In this Order—

"European Community" ("*y Gymuned Ewropeaidd*") has the same meaning as in the principal Order;

"inspector" ("*arolygydd*") means any person authorised to be an inspector for the purposes of the principal Order;

"the National Assembly" ("*y Cynulliad Cenedlaethol*") means the National Assembly for Wales;

"origin" ("*tarddle*") means, in respect of susceptible material, the place where the material is grown or produced, and "originating" is to be construed accordingly;

(**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).

(**2**) Section 1(2)(b) of the Plant Health Act 1967 provides that the competent authority in England and Wales for the purposes of that Act is the Minister of Agriculture, Fisheries and Food. By virtue of the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I.1978/272), article 2(1) and Schedule 1, the functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967 were, so far as they are exercisable in relation to Wales, transferred to the Secretary of State for Wales. These functions of the Secretary of State were then transferred to the National Assembly for Wales under the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672).

"*Phytophthora ramorum*" refers to the pest *Phytophthora ramorum* Werres, De Cock & Man in `t Veld sp. nov;

"phytosanitary certificate" ("*tystysgrif ffytoiechydol*") means a certificate duly completed either—

(a) in the form set out in Schedule 14 of the principal Order; or

(b) the equivalent

"place of production" ("*man cynhyrchu*") has the same meaning as in the principal Order;

"plant" ("*planhigyn*") has the same meaning as in the principal Order;

"plant passport" ("*pasbort planhigion*") means either—

(a) a label and, where appropriate, an accompanying document, issued in the European Community containing the relevant information in Schedule 9 to the Plant Health (Great Britain) Order 1993 ("*the Principal Order*") 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" ("*cynnyrch planhigion*") means a product of plant origin, which is unprocessed or has undergone simple preparation insofar as it is not a plant;

"premises" ("*mangre*") has the same meaning as in the principal Order;

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

"reforwarding phytosanitary certificate" ("*tystysgrif ffytoiechydol ar gyfer anfon ymlaen*") means a certificate duly completed either—

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

(b) the equivalent;

"susceptible tree" ("*coeden sy'n dueddol o gael y pla*") means a tree, excluding fruit or seeds, of the species and genera listed in the first column of Schedule 1;

"susceptible material" ("*deunydd sy'n dueddol o gael y pla*") 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" ("*pasbort planhigion y Swistir*") 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" ("*trydedd wlad*") has the same meaning as in the principal Order; and

"tree" ("*coeden*") has the same meaning as in the Plant Health (Forestry) (Great Britain) Order 1993(**4**).

(**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 and 1999/2126 and 2726, 2001/2343, 2002/1067, 2003/1157 and 2004/2365.

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

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

3. Subject to article 11, a person must not—

(a) introduce *Phytophthora ramorum* into Wales; or

(b) spread *Phytophthora ramorum* within Wales.

Imports of susceptible material originating in the USA

4. Subject to article 11, a person must not import(**5**)into Wales 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 Wales, a person must not move that material—

(a) within Wales;

(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) does not apply in the case of movement of susceptible material within Wales where such movement is in compliance with a notice served under article 12.

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

6.—(1) Subject to article 11, a person must not move into Wales susceptible material originating—

(a) elsewhere in the United Kingdom;

(b) in another Member State;

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

(**5**) 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.

(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) A person acting in the course of a trade, business or other undertaking must not move susceptible material produced in Wales 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), a person who produces susceptible material must not move that material unless he or she 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 or her application were provided for by that Order;

(b) must meet the requirements of articles 15 and 16 of the principal Order as if his or her application had been made under that Order; and

(c) must be treated by the National Assembly, 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) must notify any suspected occurrence or confirmed presence of *Phytophthora ramorum* at the place of production to which their registration relates.

(4) This article does 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 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 National Assembly'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 National Assembly, subject to any conditions it 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 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 must 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 Wales

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 must 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, must 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, must 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 must 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) affects the application of article 30A(2)(d) of the principal Order in respect of a licence granted by virtue of this article.