WELSH STATUTORY INSTRUMENTS

2002 No. 2762 (W.263)

PLANT HEALTH, WALES

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

Made - - - -	*5th November 2002*
Coming into force - -	*8th November 2002*

The National Assembly for Wales, 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 now vested in the National Assembly for Wales(**2**) makes the following Order:

Title, application and commencement

1. This Order may be cited as The Plant Health (*Phytophthora ramorum*) (Wales) (No. 2) Order 2002, shall apply in relation to Wales, and shall come into force on 8th November 2002.

Interpretation

2. In this Order—

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

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

"the National Assembly" means the National Assembly for Wales;

"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;

(**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 the 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 for Wales were then transferred to the National Assembly for Wales under article 2(a) and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

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

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

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

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

"plant product" has the same meaning as in article 2(1) of the principal Order;

"third country" means any country other than the United Kingdom or another member State of the European Community or the Isle of Man or Channel Islands;

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

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

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

"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.

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

3. Subject to article 12, no person shall—

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

(b) knowingly sell, plant, move or otherwise dispose of or knowingly cause or permit to be sold, planted, moved or otherwise disposed of *Phytophthora ramorum* within Wales.

Imports of susceptible material from the USA

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

(a) it is accompanied by a phytosanitary certificate issued in accordance with the requirements 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 free from *Phytophthora ramorum*.

Movement of susceptible material originating in third countries

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

(a) within Wales;

(b) to another part of the United Kingdom;

(**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, 1999/2641 (W.8); 2001/2500 (W.203) and 3761 (W.310) and 2002/1350 (W.130).

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

(d) to another member State

unless (subject to article 9(3) in the case of movement within Wales) 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 8th November 2002.

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

7.—(1) No person shall move into Wales susceptible material originating elsewhere in the United Kingdom or another member State, or in the Isle of Man or Channel Islands, 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 Wales 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 he or she is listed in the official register under articles 15 and 16 of the principal Order or pursuant to paragraph (2) of this article.

(2) A producer of susceptible material who is not listed in the official register under articles 15 and 16 of the principal Order:

(a) may apply for registration under those articles as if the application were provided for by the principal Order;

(b) shall meet the requirements of those articles as if his or her application had been made under the principal Order; and

(c) shall be treated by the National Assembly, in respect of such an application, 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 articles of the principal Order shall apply in respect of a plant passport required under articles 5 or 7, 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) For the purposes of carrying out an examination of susceptible material upon its entry to Wales an inspector may, by notice in writing served on the consignee of any susceptible material which has been or is to be imported into Wales, 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 has been authorised to issue plant passports under article 17 of the principal Order may issue a plant passport required under this Order.

(5) A person not authorised under article 17 of the principal Order:

(a) may apply to the National Assembly for such authorisation as if the application were provided for by the principal Order;

(b) shall meet the requirements of article 17 of the principal Order as if the application had been made under the principal Order

(c) shall be treated by the National Assembly, in respect of the application, as if the application were provided for by the principal Order.

(6) Authority conferred upon a person pursuant to paragraphs (4) or (5) to 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

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 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 of this Order is 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 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

11. Any phytosanitary certificate or plant passport satisfying the requirements of this Order issued by or with the authority of an official plant health service of a third country, Member State or another part of the United Kingdom, or 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.

Licences for scientific or research purposes

12. The provisions of article 30A of the principal Order (Licences for trial or scientific purposes and for work on varietal selections) shall apply in respect of the importation, movement and keeping of *Phytophthora ramorum* which would otherwise be prohibited under this Order as if the pest were a plant pest the importation, movement or keeping of which, but for a licence granted under the principal Order, would be prohibited.

Powers of an inspector

13.—(1) An inspector may, for the purposes of checking compliance with this Order or with the terms of a licence issued pursuant to article 12—

(a) exercise the powers conferred by article 25(1)(a) and (b) of the principal Order (subject to article 28 of that 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.

(2) Where documentation or records required to be examined by an inspector pursuant to paragraph (1)(b) are kept by means of a computer, an inspector may—

(a) require access to 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 or her such assistance as he or she may reasonably require.

Offences

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

(a) they contravene or fail to comply with articles 3(b), 5, 7, 8(1); or

(b) they intentionally obstruct an inspector in the exercise of his or her powers given by or under article 13(1)(b) or (2).

(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, that person:

(a) makes a statement which he or she 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 or she dishonestly issues a false plant passport under this Order.

(4) A person shall be guilty of an offence if he or she 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

15.—(1) The Plant Health (*Phytophthora ramorum*) (Wales) Order 2002(**4**) is revoked save that article 3 shall continue to apply in respect of any susceptible material which has been despatched from the USA before the coming into force of this Order but which does not enter Wales until after that date.

(**4**) S.I. 2002/1350 (W.130).