

Statutory Instrument 2002 No. 2573

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

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STATUTORY INSTRUMENTS

2002 No. 2573

PLANT HEALTH, ENGLAND

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

<i>Made</i>	<i>11th October 2002</i>
<i>Laid before Parliament</i>	<i>11th October 2002</i>
<i>Coming into force</i>	<i>1st November 2002</i>

The secretary of State, in exercise of the powers conferred on her by sections 2, 3(1), (2)(b), (3) and (4) and 4(1)(b) of the Plant Health Act 1967[1] hereby makes the following Order:

Title, extent and commencement

1. This Order may be cited as The Plant Health (*Phytophthora ramorum*) (England) (No. 2) Order 2002, shall extend to England, and shall come into force on 1st November 2002.

Interpretation

2. In this Order -

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

"plant" has the same meaning as in 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;

"the principal Order" means the Plant Health (Great Britain) Order 1993^[2];

"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 England

3. Subject to article 12, no person shall -

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

(b) spread *Phytophthora ramorum* within England.

Imports of susceptible material from the USA

4. - (1) Subject to article 6, no person shall import into England 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*.

(2) Susceptible material imported in breach of this article shall be prohibited within the

meaning of the Customs and Excise Management Act 1979.^[3]

Movement of susceptible material originating in third countries

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

- (a) within England;
- (b) to another part of the United Kingdom;
- (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 England) 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 England and elsewhere in the European Community

7. - (1) No person shall move into England 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 England 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 is registered as producer pursuant to articles 15 and 16 of the principal Order or to 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 the application were provided for by that Order;
- (b) shall meet the requirements of those articles as if his application had been made under the principal 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) 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 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.

(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 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.

(5) A person not authorised pursuant to paragraph (4) 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 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 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 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 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

11. Any phytosanitary certificate or plant health 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 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 ("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, save that nothing in this paragraph shall affect the application of article 30A(2)(d) in respect of a licence granted by virtue of this article.

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 under article 12 -

- (a) exercise the power 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 such assistance as he may reasonably require.

Offences

14. - (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(b), 5, 7(2), 8(1); or
- (b) he intentionally obstructs an inspector in the exercise of his 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, 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 and saving

15. - (1) Subject to paragraph 2 below, the Plant Health (*Phytophthora ramorum*) (England) Order 2002[4] ("the first *Phytophthora ramorum* Order") is revoked.

(2) Article 3 of the first *Phytophthora ramorum* Order shall apply in respect of susceptible material (as defined in article 2 of first *Phytophthora ramorum* Order) which is despatched from the USA before 1st November 2002 and which enters England on or after 1st November 2002.

Michael Meacher
Minister of State, Department for Environment, Food and Rural Affairs

11th October 2002

SCHEDULE 1

article 4(1)(a)

Susceptible	Requirements to be met in respect of the issue of any phytosanitary
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material	certificate accompanying the susceptible material ("the certificate")
<i>Acer macrophyllum</i> Pursh.	Either: (a) The certificate shall contain an additional declaration that the material originates in an area recognised by the official plant health service of the country from which the material originates ("the relevant plant health service") as being free from non-European isolates of <i>Phytophthora ramorum</i>, in which case the name of the area from where the material originates shall be specified under "place of origin"; or (b) the certificate shall be issued only after official verification by the relevant plant health service that: (i) upon official inspections carried out during the last complete cycle of vegetation of the susceptible material the subject of the certificate, or upon laboratory testing of apparent symptoms of non-European isolates of <i>Phytophthora ramorum</i>, no signs of non-European isolates of <i>Phytophthora ramorum</i> have been found on susceptible material or susceptible forest material at the place of production; and (ii) representative samples of the plants have been taken before shipment, and have been tested and found free from non-European isolates of <i>Phytophthora ramorum</i> in these tests, in which case the certificate shall be endorsed by the relevant plant health service under the heading "additional declaration" with the statement "tested and found free from non-European isolates of <i>Phytophthora ramorum</i>".
<i>Aesculus californica</i> Nutt.	
<i>Arbutus menziesii</i> Pursh.	
<i>Arctostaphylos</i> spp. Adans	
<i>Heteromeles arbutifolia</i> (Lindley) M. Roemer	
<i>Lonicera hispidula</i> (Lindl.) Dougl. ex Torr. & Gray	
<i>Rhamnus californica</i> Esch.	
<i>Rhododendron</i> spp. L., other than <i>Rhododendron simsii</i> Planch.	
<i>Umbellularia californica</i> (Hook & Arn) Nutt.	
<i>Vaccinium ovatum</i> Pursh.	
<i>Viburnum</i> spp. L.	

SCHEDULE 2

article 7

<i>Susceptible material</i>	<i>Requirements to be met in respect of susceptible material produced in England or moved into England from elsewhere in the United</i>
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	Kingdom, or from another member State, or from the Channel Islands or Isle of Man
<i>Rhododendron</i> spp. L., other than <i>Rhododendron simsii</i> Planch. <i>Viburnum</i> spp. L.	Either: (a) they originate in areas in which European isolates of <i>Phytophthora ramorum</i> are known not to occur; (b) upon official inspection at the place of production, carried out at least once at an appropriate time when the susceptible material is in active growth, or upon laboratory testing of apparent symptoms of European isolates of <i>Phytophthora ramorum</i>, no signs of European isolates of <i>Phytophthora ramorum</i> have been found on the susceptible material during the last complete cycle of vegetation; or (c) where signs of European isolates of <i>Phytophthora ramorum</i> have been found on susceptible material at the place of production, appropriate procedures aimed at eradicating <i>Phytophthora ramorum</i> have been implemented which include at least the following measures: (i) the destruction of susceptible material found to be infected by <i>Phytophthora ramorum</i> (<i>infected material</i>) and any other susceptible material within a radius of two metres of the infected material; (ii) susceptible material within a radius of ten metres of infected material and all other susceptible material from the same lot as the infected material have been retained at the place of production and found free from <i>Phytophthora ramorum</i>, after additional inspections carried out at least twice in the three months following the finding of infection referred to in sub-paragraph (i); and (iii) all other susceptible material at the place of production has been inspected frequently following the finding of infection referred to in sub-paragraph (i) and found on such inspection to be free from <i>Phytophthora ramorum</i>.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements Commission Decision 2002/757/EC of 19th September 2002 (OJ L. 252, 20.9.2002, p.37) in England insofar as it relates to plants other than forest trees. It revokes the Plant Health (*Phytophthora ramorum*) (England) Order 2002 (SI 2002/1299) (article 15).

The Order prohibits the introduction and spread of the plant pest, *Phytophthora ramorum*, a fungus identified as causing Sudden Oak Death syndrome in certain species of oak in the

USA and harm to other plant species, including *Rhododendron* and *Viburnum* (article 3).

It controls the importation of plants of a number of susceptible species from the USA, requiring such material to be accompanied by phytosanitary certificates which may be issued only after specific checks have been carried out during production and before consignment; or alternatively, where the material originates in a part of the USA recognised by plant health authorities as free from the pest, confirming that fact (article 4 and Schedule 1). Material despatched from the USA before 1st November 2002 is not subject to this Order (article 6), but the controls of the revoked *Phytophthora ramorum* Order will continue to apply to the susceptible material (as defined in that Order) which was despatched from the USA before 1st November 2002 and which enters England after 1st November 2002 (article 15).

Imports of *Rhododendron* and *Viburnum* from other countries outside of the European Community ("the EC") apart from the USA are also controlled in that such material must have a plant passport when it is moved within England or elsewhere in the EC (article 5).

Plants of *Rhododendron* and *Viburnum* produced in England or originating anywhere else in the EC (which includes for these purposes, the Channel Islands and Isle of Man), must be accompanied by a plant passport when they are moved, and are subject to further controls on their movement (article 7 and Schedule 2).

The Order requires producers of *Rhododendron* and *Viburnum* in England wishing to move such material to be registered if they are not already registered under the principal Plant Health Order (the Plant Health (Great Britain) Order 1993, as amended) (article 8). Provisions similar to those in the principal Plant Health Order apply to authorisations to registered traders to enable them to issue plant passports under the supervision of Defra, as the official plant health service in England (article 9).

There are some exceptions to the movement restrictions in the case of persons not acting in the course of a trade, business or undertaking, and there is provision (article 12) for licensed importation, movement and keeping of the prohibited pest for research purposes.

Plant Health Inspectors' enforcement powers are provided for in article 13, and offences similar to those created in the principal Order are created in respect of the production of plant passports pursuant to this Order.

Offences are also created in respect of the spread of the pest and compliance with the key provisions of the Order (article 14).

A regulatory impact assessment of the plant passporting measures implemented in this Order has been carried out and is available from Plant Health Division, DEFRA, Foss House, King's Pool, Peasholme Green, York YO1 7PX.

Notes:

[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); under 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; and under article 2(a) and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) these functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales. Under article 2(1) and (2) of the Ministry of Agriculture,

Fisheries and Food (Dissolution) Order 2002 (SI 2002/794) the functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967 as regards England were transferred to the Secretary of State.[back](#)

[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, 1999/2126 and 2726, 2001/2342 and 2002/1067.[back](#)

[3] Sections 49 and 50 of the Customs and Excise Management Act 1979 (c. 2) provide respectively for forfeiture of goods improperly imported and penalties for improper importation of goods.[back](#)

[4] SI 2002/1299.[back](#)

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