

Scottish Statutory Instrument 2002 No. 483

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

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SCOTTISH STATUTORY INSTRUMENTS

2002 No. 483

PLANT HEALTH

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

<i>Made</i>	<i>29th October 2002</i>
<i>Laid before the Scottish Parliament</i>	<i>29th October 2002</i>
<i>Coming into force</i>	<i>1st November 2002</i>

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.;

"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 susceptible 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,

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 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.

Licences for scientific or research purposes

12. The provisions of article 30A[7] 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 under 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 that inspector such assistance as that inspector may reasonably require.

Offences

14. - (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 articles 3(b), 5, 7(2), 8(1); or

(b) intentionally obstructs an inspector in the exercise of the powers conferred on that inspector 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 that person 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 that person knowingly issues a false plant passport.

(4) A person shall be guilty of an offence if that person knowingly alters a plant passport affixed to susceptible material or re-uses a plant passport for susceptible material 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. The Plant Health (*Phytophthora ramorum*) Scotland Order 2002[8] is revoked, except for the purposes of article 3 of that Order, which shall apply in respect of susceptible American material (as defined in article 2 of that Order) which is despatched from the USA before 1st November 2002 and which enters Scotland on or after 1st November 2002.

ROSS FINNIE

A member of the Scottish Executive

St Andrew's House, Edinburgh

29th October 2002

SCHEDULE 1

Article 4(a)

<i>Susceptible material</i>	<i>Requirements to be met in respect of the issue of any phytosanitary certificate accompanying the susceptible material ("the certificate")</i>
<p>Acer macrophyllum Pursh.</p> <p>Aesculus californica Nutt.</p> <p>Arbutus menziesii Pursh.</p> <p>Arctostaphylos spp. Adans</p> <p>Heteromeles arbutifolia (Lindley) M. Roemer</p> <p>Lonicera hispidula (Dougl.)</p> <p>Rhamnus californica (Esch)</p> <p>Rhododendron spp. L., other than Rhododendron simsii Planch.</p> <p>Umbellularia californica (Pursch.)</p> <p><i>Vaccinium ovatum</i> (Hook & Arn) Nutt.</p> <p>Viburnum spp. L.</p>	<p>Either:</p> <p>(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</p> <p>(b) the certificate shall be issued only after official verification by the relevant plant health service that:</p> <p>(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</p> <p>(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>".</p>

SCHEDULE 2

Article 7

<i>Susceptible material</i>	<i>Requirements to be met in respect of susceptible material produced in Scotland or moved into Scotland from elsewhere in the United Kingdom, from the Channel Islands or Isle of Man or from another Member State</i>
<p>Rhododendron spp. L., other than Rhododendron simsii Planch.</p> <p>Viburnum spp. L.</p>	<p>Either:</p> <p>(a) they originate in areas in which European isolates of <i>Phytophthora ramorum</i> are known not to occur;</p> <p>(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</p> <p>(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:-</p> <p>(i) the destruction of susceptible material found to be infected by <i>Phytophthora ramorum</i> ("infected material") and any other susceptible material within a radius of two metres of the infected material;</p> <p>(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</p> <p>(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 inspections to be free from <i>Phytophthora ramorum</i>.</p>

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements Commission Decision 2002/757/EC of 19th September 2002 (O.J. L 252, 20.9.2002, p.37) in Scotland insofar as it relates to plants other than forest trees. It revokes the Plant Health (*Phytophthora ramorum*) (Scotland) Order 2002 (S.S.I. 2002/223) (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 susceptible American material (as defined in that Order) which was despatched from the USA before 1st November 2002 and which enters Scotland 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 Scotland or elsewhere in the EC (article 5).

Plants of *Rhododendron* and *Viburnum* produced in Scotland 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 Scotland wishing to move such material to be registered if they are not already registered under the Plant Health (Great Britain) Order 1993, as amended ("the principal Order") (article 8). Provisions similar to those in the principal Order apply to authorisations to registered traders to enable them to issue plant passports under the supervision of SEERAD, as the official plant health service in Scotland (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, (article 8(3)) and there is provision (article 12) for licensed importation, movement and keeping of the prohibited pest for research purposes.

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, and offences are also created in respect of the spread of the pest and compliance with certain provisions of the Order (article 14).

No Regulatory Impact Assessment has been carried out in relation to this Order.

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) 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).[back](#)

[2] The definition of "plant" was amended by article 3(a) of S.I. 1995/1358.[back](#)

[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.[back](#)

[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.[back](#)

[5] See footnote (a) above.[back](#)

[6] See footnote (a) above.[back](#)

[7] Article 30A was inserted by article 4 of S.I. 1996/25.[back](#)

[8] S.S.I. 2002/223.[back](#)

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