
STATUTORY INSTRUMENTS

2004 No. 3213

PLANT HEALTH

The Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004

Made - - - - - [..] 2004

Laid before Parliament [..] 2004

Coming into force - - - 29th December 2004

The Forestry Commissioners, in exercise of the powers conferred on them by sections 2 and 3(1), (2), (3) and (4) of the Plant Health Act 1967(a), as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972(b), make the following Order—

Title and commencement

1. This Order may be cited as the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004 and shall come into force on 29th December 2004.

Interpretation

2. In this Order—

- “forestry trader” has the same meaning as in the principal Order;
- “inspector” means any person authorised to be an inspector for the purposes of the principal Order;
- “isolated bark” has the same meaning as in the principal Order;
- “landing” has the same meaning as in 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;
- “susceptible plant material” has the same meaning as “susceptible material” in the Plant Health (*Phytophthora ramorum*) (England) Order 2004(c);
- “*Phytophthora ramorum*” refers to the pest *Phytophthora ramorum* Werres, De Cock & Man in 't Veld sp. nov.;
- “phytosanitary certificate” has the same meaning as in the principal Order;
- “place of production” has the same meaning as in the principal Order;
- “plant passport” has the same meaning as in the principal Order;

(a) 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). Section 1(2) of the Plant Health Act 1967 defines “competent authorities” for the purposes of the Act.
(b) 1972 c. 62.
(c) S.I. 2004/2590.

- “premises” has the same meaning as in the principal Order;
- “the principal Order” means the Plant Health (Forestry) (Great Britain) Order 1993(a);
- “reforwarding phytosanitary certificate” has the same meaning as in the principal Order;
- “susceptible bark” means isolated bark of *Acer macrophyllum* Pursh., *Aesculus californica* (Spach) Nutt., *Lithocarpus densiflorus* (Hook. & Arn.)Rehd., *Quercus* spp L. and *Taxus brevifolia* Nutt.;
- “susceptible material” means susceptible bark, susceptible trees and susceptible wood;
- “susceptible tree” means a tree of the species and genera described in section I of the first column of the Schedule, but excludes the fruit or seed of such a tree;
- “susceptible wood” means wood described in section II of the first column of the Schedule;
- “third country” has the same meaning as in the principal Order;
- “tree” has the same meaning as in the principal Order; and
- “wood” has the same meaning as in the principal Order.

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

3. Subject to article 9, no person shall—
- (a) introduce *Phytophthora ramorum* into Great Britain; or
 - (b) spread *Phytophthora ramorum* within Great Britain.

Imports of susceptible material originating in the USA

4.—(1) Subject to article 9, no person shall import into Great Britain(b) a susceptible tree originating in the United States of America (“USA”) unless it is accompanied by a phytosanitary certificate issued in accordance with the relevant requirements of the Schedule, or, in the case of a susceptible tree for which a reforwarding phytosanitary certificate has also been issued, a certified copy of the phytosanitary certificate.

(2) Subject to paragraph (4) and to article 9, no person shall import into Great Britain susceptible wood originating in the USA unless it is accompanied by a phytosanitary certificate issued in accordance with the relevant requirements of the Schedule.

(3) Subject to paragraph (4), no person shall import into Great Britain any susceptible tree or susceptible wood originating in the USA unless he has notified an inspector in writing of his intention to do so and of the proposed point of entry and means of its introduction at least three days before the intended date of landing.

(4) Paragraphs (2) and (3) shall not apply to wood of *Quercus* L. originating in the USA which is imported from Switzerland.

(5) No person shall import into Great Britain susceptible bark originating in the USA.

Movement of susceptible trees

5.—(1) Subject to paragraph (2) and article 9, where a susceptible tree originating in the USA has been imported into Great Britain, no person shall move that susceptible tree—

- (a) within Great Britain;
- (b) to another part of the United Kingdom;
- (c) to the Isle of Man or the Channel Islands; or

(a) S.I. 1993/1283, amended by S.I. 1994/3094, 1995/1989, 1996/751, 1998/2206 and 3109 and 2001/2995, 2002/295 and 927.
 (b) 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) to another member State,

unless it is accompanied by a plant passport.

(2) Paragraph (1) shall not apply in the case of movement of a susceptible tree within Great Britain where such movement is in compliance with a notice served under article 10.

Plant passports

6.—(1) The provisions of article 18 and Schedule 8 of the principal Order shall apply in respect of a plant passport required under article 5 of this Order.

(2) A forestry trader—

- (a) who holds the authority of the Commissioners to issue plant passports under article 17 of the principal Order may issue a plant passport required under this Order; or
- (b) who does not hold the authority referred to in sub-paragraph (a) may apply to the Commissioners for such authority as if—
 - (i) he were applying under article 17 of the principal Order; and
 - (ii) *Phytophthora ramorum* were a relevant organism within the meaning of that Order.

(3) A forestry trader seeking authority to issue plant passports under paragraph 2(b) who is not listed in the register of forestry traders under articles 14 to 16 of the principal Order shall apply to the Commissioners for listing in the register as if applying under that Order, and the Commissioners shall treat the application as if the controls in this Order were controls of that Order.

Phytosanitary certificates

7.—(1) The provisions of articles 12(1) to (5), (6) and (7) and 13 of the principal Order shall apply to any phytosanitary certificate required under this Order in respect of any susceptible material as if that material were the “relevant material” referred to in article 12 of the principal Order.

(2) Where a consignment of susceptible material for which a phytosanitary certificate is required and has been issued under 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 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 Great Britain

8.—(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 shall be deemed to have been issued in accordance with the relevant requirements of the Schedule.

(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, shall be deemed to meet the requirements of the Schedule.

Licences for scientific or research purposes

9.—(1) Subject to paragraph (2), the provisions of article 28A of the principal Order shall 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 tree 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) shall affect the application of article 28A(2)(d) of the principal Order in respect of a licence granted by virtue of this article.

Actions which may be required by an inspector

10.—(1) If an inspector has reasonable grounds for suspecting that *Phytophthora ramorum* is present or likely to be present on any premises, he may, for the purposes of enforcing article 3(b), by notice in writing served on the occupier or person in charge of those premises or of any susceptible material present on those premises—

- (a) require any of the susceptible material to be treated, destroyed or otherwise disposed of in such manner and within such reasonable time as may be specified in the notice;
- (b) prohibit the removal of such susceptible material from premises specified in the notice or impose such other prohibitions as appear to the inspector to be necessary to prevent the spread of *Phytophthora ramorum*;
- (c) require the removal of such susceptible material to premises specified in the notice in such manner and within such reasonable time as may be so specified; or
- (d) require the taking of such other steps, specified in the notice, in such manner and within such reasonable time as may be specified in the notice, as appear to the inspector to be necessary to prevent the spread of *Phytophthora ramorum*.

(2) If an inspector has reasonable grounds for believing that it is necessary for the purpose of preventing the spread of or ensuring the eradication of *Phytophthora ramorum* from any premises, he may by notice in writing served on the occupier or other person in charge of any other premises impose such prohibitions and require the taking of such reasonable steps, specified in the notice, as appear to him to be necessary for that purpose, such steps to be taken in such manner and in such reasonable time as may be specified in the notice.

(3) For the purposes of carrying out an examination of susceptible material upon its entry to Great Britain an inspector may, by notice in writing served on the consignee of any susceptible material which has been or is to be imported into Great Britain, 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.

Actions which may be taken by an inspector

11.—(1) Without prejudice to the provisions in article 10, and subject to paragraph (3), if an inspector has reasonable grounds for suspecting that *Phytophthora ramorum* is present or likely to be present on any premises he may, after giving the occupier or other person in charge of the premises reasonable notice of his intention and upon production if so required of his authority, enter such premises and either on those premises or elsewhere take steps—

- (a) to destroy or treat in some other way any susceptible material found on those premises; or
- (b) to destroy and to prevent the spread of *Phytophthora ramorum* found on those premises.

(2) Subject to paragraph (3), an inspector may, on production if so required of his authority, at all reasonable times for the purpose of ascertaining whether *Phytophthora ramorum* exists on any premises, or for any other purpose of this Order, including checking compliance with it, enter any premises to—

- (a) examine, photograph or mark any part of the premises or any susceptible material or object on the premises;
- (b) take samples of any susceptible material or other object and anything which has been or may have been in contact with *Phytophthora ramorum*; or
- (c) require production of any documents 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 documents or records.

(3) The power to enter premises conferred by paragraphs (1) and (2) may be exercised in respect of premises used wholly or mainly as a dwelling only in accordance with a warrant granted under article 27 of the principal Order.

(4) For the purposes of the examinations referred to in paragraph (2), an inspector may open any container, bundle or other package, authorise any person to open on his behalf any container,

bundle or other package or require the owner or any person in charge of any container, bundle or other package to open it in such manner as the inspector may specify.

(5) An inspector may, so far as it is necessary for the purposes of the examinations referred to in paragraph (2), prohibit entirely or to such extent as he may indicate the movement of any susceptible material, container, bundle, other package or object by means of which in his opinion *Phytophthora ramorum* may spread.

(6) For the purposes of the examinations referred to in paragraph (2), an inspector may require the occupier or other person in charge of the premises in which the examination is taking place to provide adequate lighting and, where appropriate, suitable areas for inspection.

(7) Where any such document or record as is mentioned in paragraph (2)(c) is kept by means of a computer, an inspector may—

- (a) require access to, and inspect and check the operation of, 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.

(8) An inspector on entering any premises under paragraphs (1) or (2) may take with him such other persons including, but not limited to, representatives of the European Commission, and such equipment and vehicles as are necessary for the purpose of facilitating the exercise of his powers under those paragraphs, and such other persons whether or not accompanied by the inspector, upon production if so required of their authority given in that behalf by an inspector, may remain on the land and from time to time re-enter with such equipment and vehicles as aforesaid, and carry out such work for the purposes aforesaid and in such manner as the inspector may direct.

Miscellaneous provisions as to notices and failure to comply with notices

12. The following provisions of the principal Order shall apply to a notice issued under article 10 of this Order—

- (a) article 23, as if references to article 21 of the principal Order were to article 10 of this Order and other references to the principal Order were to this Order;
- (b) article 25, as if references to the principal Order were to this Order;
- (c) article 26, subject to article 27 of the principal Order, as if references to the principal Order were to this Order.

Offences

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

- (a) subject to paragraph (1A), he contravenes or fails to comply with articles 3, 4, 5(1) or 9(1); and
- (b) he contravenes or fails to comply with a provision or condition of a notice served under this Order or a licence granted under article 28A of the principal Order as applied for the purposes of this Order by article 9; or
- (c) he intentionally obstructs an inspector or any person authorised by an inspector in the exercise of his powers given by or under this Order.

(1A) Paragraph (1)(a) shall not apply where an article of any description is landed in Great Britain in contravention of a prohibition in this Order.

(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

14. The Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) (No. 2) Order 2002(a) is revoked.

The Official Seal
of the Forestry Commissioners

6 December 2004

Wilma Harper
Secretary to the Forestry Commissioners

(a) S.I. 2002/2589.

SCHEDULE

Articles 2 and 4(1) and (2)

Susceptible Material

Requirements to be met in respect of the issuing of any phytosanitary certificate accompanying susceptible material ("the certificate")

I. Susceptible material, other than susceptible wood and susceptible bark

Acer macrophyllum Pursh.
Acer pseudoplatanus L.
Adiantum aleuticum (Rupr.) Paris
Adiantum jordanii C. Muell.
Aesculus californica (Spach) Nutt.
Aesculus hippocastanum L.
Arbutus menziesii Pursch.
Arbutus unedo L.
Arctostaphylos spp. Adans
Calluna vulgaris (L.) Hull
Castanea sativa Mill.
Fagus sylvatica L.
Frangula californica (Eschsch.) Gray
Frangula purshiana (DC.) Cooper
Fraxinus excelsior L.
Griselinia littoralis (Raoul)
Hamamelis virginiana L.
Heteromeles arbutifolia (Lindley) M. Roemer
Kalmia latifolia L.
Laurus nobilis L.
Leucothoe spp. D. Don
Lithocarpus densiflorus (Hook & Arn.) Rehd.
Lonicera hispidula (Lindl.) Dougl. Ex Torr. & Gray
Magnolia spp. L.
Michelia doltsopa Buch.-Ham. ex DC
Nothofagus obliqua (Mirbel) Blume
Osmanthus heterophyllus (G. Don) P.S. Green
Parrotia persica (DC) C.A. Meyer
Photinia x fraseri Dress
Pieris spp. D. Don
Pseudotsuga menziesii (Mirbel) Franco
Quercus spp. L.
Rosa gymnocarpa Nutt.
Rhamnus californica (Esch)
Salix caprea L.
Sequoia sempervirens (Lamb. Ex D. Don) Endl
Syringa vulgaris L.
Taxus spp. L.
Trientalis latifolia (Hook)
Umbellularia californica (Hook. & Arn.) Nutt

Either—

(a) The certificate shall contain an additional declaration that the material originates in an area in which non-European isolates of *Phytophthora ramorum* are known not to occur, 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 official plant health service of the country from which the material originates ("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 *Phytophthora ramorum*, no signs of non-European isolates of *Phytophthora ramorum* have been found on susceptible material or susceptible plant material at the place of production; and

(ii) representative samples of the susceptible material have been taken before shipment, and have been tested and found free from non-European isolates of *Phytophthora ramorum* 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 *Phytophthora ramorum*".

Vaccinium ovatum Pursh

II. Susceptible wood

a. Wood of—

- *Acer macrophyllum* Pursh.
- *Aesculus californica* (Spach) Nutt.
- *Lithocarpus densiflorus* (Hook. & Arn.) Rehd.
- *Taxus breviflora* Nutt.

b. Wood of *Quercus* spp. L.

One of the following alternatives is satisfied—

(a) The certificate shall contain an additional declaration that the material originates in an area in which non-European isolates of *Phytophthora ramorum* are known not to occur, in which case the name of the area from where the material originates shall be specified under “place of origin”;

(b) the certificate shall be issued only after official verification by the relevant plant health service that the wood has been stripped of its bark, and that at least one of the following applies—

(i) that it has been squared so as to remove entirely the rounded surface;

(ii) that the moisture content of the wood does not exceed 20% (expressed as a percentage of the dry matter); or

(iii) that the wood has been disinfected by an appropriate hot-air or hot-water treatment;

or

(c) in addition to the issue of a certificate, in the case of sawn wood with or without residual bark attached, there is evidence by a mark “Kiln-dried”, “KD” or another internationally recognised mark put on the wood or on its packaging in accordance with current commercial usage, that it has undergone kiln-drying to below 20% moisture content (expressed as a percentage of dry matter) at the time of manufacture, achieved through an appropriate time/temperature schedule.

Without prejudice to the requirements of item 25 of Schedule 4, Part A of the principal Order, if the wood originates in an area in which non-European isolates of *Phytophthora ramorum* are known not to occur, the certificate shall contain an additional declaration to that effect and the name of the area from where the material originates shall be specified under “place of origin”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 29th December 2004, implements in Great Britain in relation to trees, wood and isolated bark—

- Commission Decisions 2002/757/EC of 19th September 2002 (OJ No. L252, 20.9.2002, p. 37) and 2004/426/EC of 29th April 2004 (OJ No. L189, 27.5.2004, p. 1) on provisional emergency phytosanitary measures to prevent the introduction into and the spread within the Community of *Phytophthora ramorum*; and
- Commission Decision 2004/278/EC (OJ No. L 87, 25.3.2004, p. 31) on the Community position on the amendment of the Appendices to Annex 4 to the Agreement between the European Community and the Swiss Confederation on trade and agricultural products insofar as it relates to wood of *Quercus* L.

The Order prohibits the introduction into and spread within Great Britain of the plant pest *Phytophthora ramorum* (article 3).

The Order places certain controls on the importation of material (bark, trees and wood) of a number of susceptible plant species from the USA. In the case of susceptible trees and susceptible wood, such material must 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 *Phytophthora ramorum*, confirming that fact (article 4 and Schedule). Imports of such material must be notified to an inspector at least three days before landing (article 4(3)). These requirements do not apply in the case of wood of *Quercus* L. imported from Switzerland (article 4(4)). The importation of susceptible bark originating in the USA is prohibited (article 4(5)).

Susceptible trees imported from the USA must be accompanied by a plant passport when being moved within Great Britain or to another part of the UK, to the Isle of Man or the Channel Islands or to another member State (article 5).

Provisions similar to the principal Order apply to authorisations to forestry traders to enable them to issue plant passports under the supervision of the Forestry Commission (article 6), to the treatment of phytosanitary certificates (article 7) and to the effect of phytosanitary certificates and plant passports issued outside Great Britain (article 8).

There is provision for licenses to be granted under the principal Order for the importation, movement and keeping of *Phytophthora ramorum* for research purposes (article 9).

Provisions similar to those in the principal Order apply to actions which may be required or which may be taken by inspectors (articles 10 to 12).

Offences similar to those created in the principal Order are created in respect of the production of plant passports pursuant to this Order and in respect of the introduction, spread and movement of *Phytophthora ramorum*, compliance with notices served under this Order and the obstruction of inspectors exercising their powers under this Order (article 13).

The Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) (No. 2) Order 2002 (SI 2002/2589) is revoked (article 14).

No regulatory impact assessment has been undertaken in respect of the measures in this Order.