

**EXPLANATORY MEMORANDUM TO THE
THE PLANT HEALTH (*PHYTOPHTHORA RAMORUM*) (ENGLAND)
ORDER 2004**

2004 No. 2590

- 1.1. This Explanatory Memorandum is laid before Parliament by Command of Her Majesty.
- 1.2. Department for Environment, Food and Rural Affairs.

2. Description

The Order implements in England Commission Decisions 2002/757/EC and 2004/426/EC which establish emergency measures to prevent the introduction into and the spread of *Phytophthora ramorum* within the Community and, insofar as it relates to material susceptible to *Phytophthora ramorum*, Commission Decision 2004/278/EC which introduces plant passport rules for plant material in trade between the European Community and Switzerland.

3. N/A

4. Legislative background

- 4.1. Provisional emergency measures to prevent the introduction and spread of *Phytophthora ramorum* within the Community were adopted under Commission Decision 2002/757/EC and introduced in England in November 2002 through the Plant Health (*Phytophthora ramorum*) (England) (No.2) Order 2002. This replaced the UK's emergency legislation put in place in May 2002. Commission Decision 2002/757/EC included a commitment to review the measures in December 2003. As a result of that review, the Commission agreed that it was appropriate that the emergency measures continue with some amendments. Commission Decision 2004/426/EC, dated 29 April 2004 and published on 27 May 2004, amends Commission Decision 2002/757/EC.

Decision 2004/278/EC relates to the EU's agreement with the Swiss Confederation regarding trade in agricultural products. Under this agreement, a number of plants and plant products can be traded between the EU and Switzerland with a plant passport rather than a phytosanitary certificate.

5. Extent

- 5.1. The instrument applies in respect of England only.

6. European Convention on Human Rights

N/A

7. Policy background

Phytophthora ramorum is the pathogen that has been causing the death of some species of oak trees in parts of the USA for several years. We now know that this is the same pathogen that has recently caused damage to viburnums and rhododendrons and some other plant species in the UK and Europe. *Phytophthora ramorum* is of great concern because a major epidemic in our native trees could affect the horticultural industry, the commercial forestry industry and our native landscape and have knock on consequences for other parts of the local economy such as tourism. As soon as the first finding of *Phytophthora ramorum* was confirmed in the UK in April 2002 we took precautionary measures by introducing emergency legislation designed to control the disease. These measures came into force in May 2002. Following pressure from the UK, the EU recognised the potential effects of this disease and introduced emergency measures throughout the EU in November 2002. The Plant Health Standing Committee reviewed these measures and agreed that they should continue and that the plant passport arrangements should be extended to include camellia. The EU measures require also an intensive survey programme of retail outlets, nurseries, gardens and other established planting areas.

The Plant Health (Amendment) (England) Order 2004 implemented the EU/Swiss agreement to allow plant passports rather than phytosanitary certificates to be used for trade in certain plants and plant products between the EU and Switzerland. This Order includes provisions to apply the same plant passport requirements to trade in *Camellia*, *Rhododendron* and *Viburnum*.

8. **Impact**

- 8.1. Due to the time scales for publication to ensure the emergency measures remain in place and are up to date it has not been possible to undertake a public consultation. However the main stakeholders informed of the changes. A Regulatory Impact Assessment (which applies to England only) has been prepared and is attached.

9. **Contact**

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Department for Environment, Food and Rural Affairs
29 September 2004

REGULATORY IMPACT ASSESSMENT

1. TITLE OF PROPOSAL

Amendments to the Plant Health (*Phytophthora ramorum*) (England) (No.2) Order 2002

2. PURPOSE AND INTENDED EFFECT OF THE MEASURE

2(i) Objective

To implement amendments to the Community emergency measures to prevent the introduction and spread of *Phytophthora ramorum*.

2(ii) The background

Commission Decision 2002/757 introduced emergency measures to eradicate *Phytophthora ramorum* (the organism which has caused Sudden Oak Death in California). Commission Decision 2004/426 amends that decision.

The main requirement of Commission Decision 2004/426 is to extend the plant passporting arrangements currently in place for *Viburnum* and *Rhododendron* (except *Rhododendron simsii* – pot azaleas), to *Camellia*. Other changes required by the Commission Decision are:

- The addition of plants recently identified as hosts to the list of plants subject to import controls;
- An amendment to the plant passporting arrangements to “plants intended for planting” (the previous wording inadvertently caught cut branches and foliage which pose negligible risk);
- A specific obligation on production nurseries to report any suspected cases of *Phytophthora ramorum* (previously covered by a general obligation contained in the main Plant Health Order relating to new pests and diseases);
- A prohibition on the use of fungicides during the three month holding period so as not to suppress symptoms of *Phytophthora ramorum*.

The Order also applies the plant passport arrangement to susceptible material from Switzerland, resulting from the EU/Swiss trade arrangements and for consistency transposes measures from the Plant Health (Great Britain) Order 1993 to define Plant Health inspectors’ powers to hold and destroy plant material.

The impact of these additional measure on exporting businesses and their national authorities is not considered in this RIA.

This Regulatory Impact Assessment applies to England only.

2(iii) Risk Assessment

There are three main risks if the new measures are not implemented:

- The risk of infraction proceedings by the Commission;
- Risk to plant health. The continued findings of disease suggests that conditions in the UK are favourable for infection and development of disease in trees. The measures to be introduced have been agreed by scientific and other experts and are being introduced at the Community level to provide additional protection for the natural environment against known plant health risks, based on developments in member states and elsewhere;
- Risk that our industry may be out of line with other Member States and not be able to trade in certain plant material and thereby lose financially.

3. OPTIONS

3(i) Identifying the options

Two options have been identified:

Option 1 – Do nothing

This would place English exporters at a disadvantage with their European counterparts as they would not be able to trade the host plant camellia within the EU. Trade with Switzerland would also be difficult. Infraction proceedings would also be a possibility.

Option 2 – Implement the new requirements

The most significant changes affect trade in *Camellia* and those who wish to export to Switzerland. Businesses which do not already trade in *Camilla* will need to register with Defra and receive an annual authorisation visit. They would also need to amend their labelling to include passport details. Businesses which are already registered would just need to amend their labels. This and the remaining measures outlined in paragraph 2(ii) would ensure consistency with the rest of the Community, and provide additional protection against the plant health risks identified. It would also avoid infraction proceedings.

4. BENEFITS

4(i) Business sectors affected

The main businesses affected are nurseries and other companies which trade in certain plants. Charities and voluntary organisations apart from those who may be involved with the commercial activities referred to, are not affected.

Plant passporting involves registration and authorisation of businesses trading in specified plants and a requirement for commercial movements of such material to be accompanied by a plant passport. Authorisation is granted annually on the basis of an

official inspection of the plants during the growing season and a check on record keeping. These measures would reduce the risk of pest outbreaks and therefore the likelihood of having to carry out containment and eradication measures.

The benefits of implementing the measures are:

- Consistency with other member states – this would facilitate trade and ensure a co-ordinated approach to pest risk management;
- Reducing environmental consequences - which would result if this disease became established or more trees species were affected;
- Increasing the chances of detection of disease - as growers must report any suspected cases and are not allowed to suppress symptoms by the use of fungicides;
- Ensures consistency in the use of inspectors powers;
- Ensures traded material to and within the EU is free from *Phytophthora ramorum*;
- Avoidance of infraction proceedings.

4(ii) Issues of equity or fairness

It is perceived that the measures would impact equally across the industry. The likely burden on small businesses is not considered to be any more onerous, in relation to size, than it would be for larger businesses, although it is recognised that smaller businesses would, in the main, have less administrative capacity. Taking action now to protect the environment will also alleviate potential impact on the rural economy.

5. COSTS

5(i) Compliance costs

There would be no compliance costs for the option of doing nothing. However those who trade in Camellia and with Switzerland may suffer significant loss of trade if they are unable to apply the new measures.

There would be three compliance elements involved in implementing the new measures for trade in *Camellia*: registration, authorization and labeling. The new registration requirements would be free and with no time limit. Authorisation to issue plants passports would require an annual visit by the Plant Health and Seeds Inspectorate and would be chargeable at the rate of £81 per hour on site. There would be an administrative charge associated with amendment of labels and documentation to include passport details. However, the additional costs would be negligible as most suppliers would be able to amend existing documentation to accommodate this information. Similarly trade with Switzerland will be less burdensome under the plant passporting arrangements than if growers had to apply for a phytosanitary certificate.

In terms of costs to central Government, monitoring and administration by the Plant Health and Seeds Inspectorate would be covered by the funding agreed in December 2003 for the additional *Phytophthora ramorum* activities.

5 (ii) Cost for a typical business

This will depend on the level of trade in the material affected. Any business not currently authorised to issue a plant passport for camellia would be required to do so and register and receive annual visits at the cost of £81 per hour. The minimum inspection period is 30 minutes (but may be more depending on layout of the premises, numbers of plants etc. For premises that are already authorised to trade in plants requiring a plant passport and also wish to trade in *Camellia*, no additional costs would be incurred.

5(iii) Total compliance costs

Although precise numbers are not known there are probably less than 5 growers who would specialise in growing only *camellias* and therefore be caught for the first time by these new measures. The additional burden on them, and on the Plant Health and Seeds Inspectorate, is therefore negligible.

6. CONSULTATION WITH SMALL BUSINESSES: “THE LITMUS TEST”

It is important that all appropriate businesses, irrespective of size, comply with the relevant requirements. This avoids any gaps in plant health assessment and traceability of material. However, the impact of such controls is proportionate to the size and efficiency of business, in that charges for official inspections are based on the length of time spent by inspectors on a premises, and the number of labels to be printed and issued depends on the number of plants being traded.

7. COMPETITION ASSESSMENT

The Competition Filter has been applied and the conclusion was that there is no significant risk of a negative competitive impact, therefore a detailed assessment has not been carried out.

8. ENFORCEMENT AND SANCTIONS

The original *Phytophthora ramorum* Order included specific offences provisions in respect of a contravention or failure to comply with certain provision of that Order and these have been carried forward to the new Order. A person guilty of an offence would be liable on summary conviction to a fine not exceeding £5,000. This is equivalent to the maximum fine permissible for contraventions under the Plant Health (Great Britain) Order 1993. The Plant Health and Seeds Inspectorate is responsible for enforcing these provisions.

9. MONITORING AND REVIEW

A continuous programme to monitor plant health developments is carried out at Community level by the Standing Committee on Plant Health. This takes into account developments within member states, including new pest risk assessments and interceptions.

Implementation of the new measures will be monitored by the Plant Health and Seeds Inspectorate, who will undertake annual authorisation visits at relevant premises.

In addition, for the *Phytophthora ramorum* measures, the situation will be kept under review through:

- Surveys carried out in the UK and other EC Member States of host plant material, which will help to determine the extent to which the fungus is present in the Community.
- Increased monitoring by the Plant Health and Seeds Inspectorate of host plants, at import inspections as well as plant passporting visits.
- Increased surveys of established planting areas to ascertain the extent of the disease in the 'wild'.
- The outcome of further Research and Development to supply key information needed for an updated risk assessment.

10. CONSULTATION

It has not been possible to carry out a full 12 week consultation on the amendments to these emergency measures due to the time scales for publication to ensure the emergency measures remain in place and are up to date. However our main stakeholders (the National Farmers Union, Horticultural Trades Association, the Royal Horticultural Society, the National Trust, Forestry and Timber Association) have been informed of the changes.

11. SUMMARY AND RECOMMENDATION

The options are to do nothing or to implement the new requirements.

The costs associated with implementing the new measures are negligible, but the risks associated with not implementing them are substantial. In particular, trade with other member states would be affected, plant health status would be jeopardised and infraction proceedings would be incurred. In view of this assessment, it is recommended that the measures are implemented as required.

12. DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister: Ben Bradshaw

Date: 2nd October 2004

11. CONTACT POINTS

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