

Statutory Instruments.

S.I. No. 578 of 2004

**European Communities (Phytosanitary Measures)
Regulations 2004**

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European Communities (Phytosanitary Measures) Regulations 2004

I, Joe Walsh, Minister for Agriculture and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving effect to Commission Decision 2002/757/EC of 19 September 2002¹ as amended by Commission Decision 2004/426/EC of 29 April 2004², hereby make the following Regulations-

Citation

1. These Regulations may be cited as the European Communities (Phytosanitary Measures) Regulations 2004.

Interpretation

- 2.(1) In these Regulations-

"authorised officer" means –

- (a) a person appointed under Regulation 7,
- (b) an authorised officer within the meaning of the European Communities ((Introduction of Organisms Harmful to Plants or Plant Products) (Prohibition) Regulations 1980 (S.I. No. 125 of 1980),
- (b) a member of the Garda Síochána, or
- (c) an officer of Customs and Excise;

"Commission Decision" means Commission Decision 2002/757/EC of 19 September 2002 as amended by Commission Decision 2004/426/EC of 29 April 2004;

"harmful organism" means *Phytophthora ramorum* Werres, De Cock & Man in't Veld sp. nov.;

"Minister" means the Minister for Agriculture and Food;

"premises" includes land with or without buildings;

¹ O.J. No. L 252 of 20.9.2002, p. 37.

² O.J. No. L 154 of 30.4.2004, p. 1.

“third country” means a State (other than the United States of America) that is not a member state of the European Community.

- (2) A word or expression that is used in the Commission Decision and is also used in these Regulations has, unless the contrary intention appears, the same meaning in these Regulations as in the Commission Decision.
- (3) In these Regulations, unless the contrary intention appears, reference to a Regulation is to a Regulation of these Regulations and a reference to a paragraph is a reference to the paragraph in which the reference occurs.

Harmful organism

- 3.(1) A person shall not introduce a harmful organism into the State or cause or permit another person to bring a harmful organism into the State.
- (2) A person shall not introduce susceptible bark that originates in the United States of America into the State or cause or permit another person to bring susceptible bark that originates in the United States of America into the State.
- (3) A person shall not have in his or her possession or under his or her control or move within the State a harmful organism that has been introduced into the State in contravention of paragraph (1) or susceptible bark that has been brought into the State in contravention of paragraph (2).

Susceptible plants and plant products

- 4. A person shall not introduce a susceptible plant or susceptible wood that originates in the United States of America and departed the United States of America after 31 October 2002 into the State unless-
 - (a) the plant or wood is accompanied by a certificate that complies with points 1a and 2 of the Annex to the Commission Decision that relates to the plant or wood,
 - (b) the plant or wood is inspected, on entry into the State, by an authorised officer, and
 - (c) the plant or wood is, following inspection under paragraph (b), free of non-European isolates of the harmful organism.
- 5. Measures regarding wood of *Quercus L.* in Annex IV Part A Section 1(3) of Council Directive 2000/29/EC of 8 May 2000² do not apply to susceptible wood of *Quercus L.* (including wood that has not kept its natural round surface) that originates in the United States of America if the susceptible wood is accompanied by a certificate that complies with point 2(b) of the Annex to the Commission Decision.

² O.J. No. L 169 of 10.7.2000, p. 1.

Movement

- 6.(1) A person shall not move within the State or export to a member state a plant intended for planting of *Viburnum* spp, *Camellia* spp., *Rhododendron* spp., other than *Rhododendron simsii* Planch, other than seeds, that originates in a third country after 31 October 2002 unless it is accompanied by a plant passport prepared and issued in accordance with Commission Directive 92/105/EEC of 3 December 1992³.
- (2) A person shall not move a plant intended for planting of *Viburnum* spp, *Camellia* spp., *Rhododendron* spp., other than *Rhododendron simsii* Planch, other than seeds, that originates in a member state after 31 October 2002, from its place of production unless-
- (a) the producer is registered in accordance with Council Directive 92/90/EEC of 3 November 1992⁴, and
 - (b) the plant complies with point 3 of the Annex to the Commission Decision.
- (3) A person shall not have in his or her possession or under his or her control a plant intended for planting of *Viburnum* spp, *Camellia* spp., *Rhododendron* spp., other than *Rhododendron simsii* Planch, other than seeds that is being or has been moved in contravention of this Regulation.

Authorised officers

- 7.(1) The Minister may, by instrument in writing, appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of some or all of these Regulations as are specified in the instrument.
- (2) A warrant of appointment as an authorised officer shall be issued to every person appointed under this Regulation by the Minister and when exercising a function conferred on the person as an authorised officer the person shall, if requested by a person affected, produce the warrant to that person.
- (3) The Minister may terminate the appointment of an authorised officer appointed by him or her, whether or not the appointment was for a fixed period.
- (4) An appointment as an authorised officer shall cease—
- (a) where it is terminated pursuant to paragraph (3),
 - (b) where it is for a fixed period, on the expiry of that period, or

³ O.J. No. L 4 of 8.1.1993, p. 22.

⁴ O.J. No. L 344 of 26.11.1992, p. 38.

- (c) where the person appointed is an officer of the Minister, upon the person ceasing to be such an officer.
- (5) Nothing in paragraph (4) shall be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph relates.
- (6) An authorised officer or an expert employed by or acting on the authority of the Commission of the European Communities accompanied by an authorised officer may at all reasonable times enter a premises (other than such part of a premises that is a dwelling), vessel, vehicle or aircraft in which the authorised officer has reasonable cause to suspect that –
 - (a) the harmful organism, a susceptible plant wood, or bark may be present,
 - (b) a document relating to any thing to which paragraph (a) refers may be present,
 - (c) an object that has been in contact with any thing to which paragraph (a) refers may be present,
 - (d) an offence under these Regulations is being or may have been committed, or
 - (e) evidence of an offence under these Regulations is to be found.

Powers of authorised officer

- 8. An authorised officer may, subject to Regulation 9, on a premises, vessel, vehicle or aircraft –
 - (a) examine or inspect an organism, plant, plant product or other thing therein or thereon,
 - (b) take, without payment, an organism, plant or plant product or anything or substance therein or thereon or such sample from a thing aforesaid as he or she may reasonably require and carry out or cause to be carried out on an organism, plant, plant product, sample, thing or substance such tests, analyses, examinations, tests or inspections as he or she considers necessary or expedient,
 - (c) carry out or cause to be carried out such measurements, examinations, tests or inspections of the premises or a part thereof and any equipment, plant, machinery or other thing or substance as he or she considers necessary or expedient,

- (d) require a person to give his or her name and address and such information or produce any book, certificate, document or other record as the authorised officer considers necessary or expedient,
- (e) examine and take copies of, or extracts from a thing aforesaid, and
- (f) seize and detain a thing aforesaid or other thing that he or she has reasonable cause to suspect may be evidence of an offence under these Regulations.

Search warrant

9. (1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting-

- (a) that there is on a premises, vehicle, vessel, aircraft or container a plant, plant product or other thing which is infected or may be infected with the harmful organism or is at risk of being so infested,
- (b) that a plant, plant product or other thing has come from or through a place where infection with the harmful organism is or may exist, or
- (c) there is evidence of an offence under these Regulations therein or thereon,

the judge may issue a search warrant.

- (2) A search warrant issued under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers, members of the Garda Síochána and officers of Customs and Excise as the named officer thinks necessary, at any time or times, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by force) the premises or vehicle, vessel, aircraft or container named in the warrant.
- (3) Where a premises, vehicle, vessel, aircraft or container is entered pursuant to a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

Disposal Notice

10.(1) Where an authorised officer is of the opinion that –

- (a) a plant or plant product has been introduced, moved, held in possession or is to be exported from the State in contravention of these Regulations,
- (b) a plant, plant product or other thing including any material in which a plant or plant product is packed is infected with the harmful organism or has been in contact with the organism, or
- (c) measures should be taken to prevent infection or contact with the harmful organism,

he or she may serve or cause to be served on the owner or person who appears to be in charge, possession or control of such plant or plant product a notice (in this Regulation referred to as a “Disposal Notice”) stating that opinion and directing that –

- (i) a plant, plant product or other thing be kept in such premises (including on board a vessel or aircraft or on a vehicle) as the officer shall specify in the notice,
 - (ii) such alterations be made to the premises in which a plant or plant product is located as the officer shall specify in the notice,
 - (iii) a plant, plant product or other thing be treated, destroyed or disposed of in such manner as the officer shall specify in the notice, or
 - (iv) a plant, plant product or other thing be removed from the State in such manner (if any) as may be specified
- (2) A person, including the master, captain, owner or operator of a vessel or aircraft shall comply with a disposal notice or a requirement of a disposal notice unless and until the notice is annulled under paragraph (10).
- (3) A requirement contained in a disposal notice shall specify a time limit within which the notice is to be complied with.
- (4) A requirement specified in a disposal notice (in this paragraph referred to as “the earlier disposal notice”) may be amended or withdrawn by a further notice in writing and the earlier disposal notice shall have effect subject to such amendment or withdrawal.
- (5) A disposal notice, whether amended under paragraph (4) or not, may require the owner or person in charge of a plant, plant product or other thing to choose

between one or more of the requirements specified in the disposal notice and that person shall comply with the requirement that he or she chooses.

- (6)(a) A disposal notice shall, subject to sub-paragraph (b), be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways –
- (i) by delivering it to the person,
 - (ii) by leaving it at the address at which the person ordinarily resides or, in a case where an address for service has been furnished, at that address,
 - (iii) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case where an address for service has been furnished, at that address, or
 - (iv) where the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the disposal notice relates to a premises, by delivering it to some person over 16 years of age resident or employed on the premises or by affixing it in a conspicuous position on or near the premises.
- (b) Where a disposal notice is to be served on or given to a person who is the owner or occupier of a premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words the owner, the occupier or, as the case may require, such other designation as the authorised officer considers appropriate.
- (c) A person shall not at any time within 6 months after a disposal notice is affixed under paragraph (6)(a)(iv) remove damage or deface the notice without lawful authority.
- (d) For the purposes of this Regulation, a company within the meaning of the Companies Acts, 1963 to 1990, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.
- (7) A person, being a person affected by a disposal notice, may, within 7 days of service of the disposal notice, apply to the Judge of the District Court having jurisdiction in the District Court District where the subject of the notice is situated or to the Judge of the District Court having jurisdiction in the District Court District where the person ordinarily resides on the grounds that the disposal notice or any term of the disposal notice are not reasonable, having regard to these Regulations (in this Regulation referred to as “an appeal”).

- (8) An appeal may be heard at any sitting of the District Court within the appropriate District Court Area.
- (9) Notice of an appeal, which shall contain a statement of the grounds upon which it is alleged that the disposal notice or any term of the disposal notice is unreasonable having regard to these Regulations, shall be served on the Minister at least 48 hours prior to the hearing of the appeal and a copy thereof shall be lodged with the appropriate District Court Clerk.
- (10) On the hearing of an appeal, a Judge of the District Court may confirm, with or without modification, or annul a disposal notice.
- (11) A person, including a person on whom a disposal notice is served, shall not-
- (a) pending the determination of an appeal, deal with a plant, plant product or other thing to which a disposal notice relates other than under and in accordance with the notice, or
 - (b) after such appeal, deal with a plant, plant product or other thing to which a disposal notice relates other than under and in accordance the Disposal Notice as modified, as the case may be.
- (12) Where -
- (a) a person, by act or omission, fails to comply, whether within the time specified therein or otherwise, with a disposal notice (including a disposal notice modified in accordance with paragraph (10)), or
 - (b) an authorised officer has reasonable cause to suspect –
 - (i) that a disposal notice (including a disposal notice modified in accordance with paragraph (10)) is not or will not be complied with, or
 - (ii) pending the determination of an appeal, a plant, plant product or other thing to which the disposal notice relates is or will not be dealt with in accordance with paragraph (11),
- an authorised officer may seize and detain the plant, plant product or other thing and sell or dispose of the plant, plant product or other thing in a manner as the authorised officer considers appropriate.
- (13) Subject to paragraph (15), the proceeds of the sale or disposal of a plant, plant product or other thing under paragraph (12) shall be paid to the owner of the plant, plant product or other thing as soon as may be after such sale or disposal

and after a person has satisfied the Minister that he or she is the owner or otherwise entitled to the proceeds of the sale or disposal.

- (14) The costs of seizure, sale or disposal of a plant, plant product or other thing under this Regulation shall be recoverable by the Minister as a simple contract debt in a court of competent jurisdiction.
- (15) The costs of any action required by a disposal notice shall be borne by the owner of a plant, plant product or other thing to which such notice relates.

Application of Customs Consolidation Act 1876

- 11. The Customs Consolidation Act 1876, relating to the condemnation and disposal of goods seized under that Act, shall apply and have effect in relation to all articles seized under these Regulations as if the articles had been seized under that Act.

Obstruction

- 12. A person shall not -
 - (a) obstruct or impede an authorised officer in the exercise of any of his or her powers under these Regulations,
 - (b) fail, without reasonable excuse, to comply with a requirement or direction made by an authorised officer under Regulation 8(d) or 10, or
 - (c) in purporting to give information required by an authorised officer for the performance of the officer's powers under Regulation 8 -
 - (i) make a statement which he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (ii) fail to disclose any material particular.

Offences

- 13.(1) A person who contravenes Regulation 3, 4, 6, 10(2), (11) or 12 is guilty of an offence and liable on conviction to a fine not exceeding €3,000 or to a term of imprisonment not exceeding six months or to both.
- (2) An offence under these Regulations may be prosecuted by the Minister.
- (3) Where an offence under these Regulations has been committed by a body corporate and it is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person who, when the offence was committed, was a director, manager, secretary or other

officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if guilty of the first-mentioned offence.

- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to the acts and defaults of a member in connection with the functions of management as if such a member were a director or manager of the body corporate.

Saver

14. These Regulations are in addition to and not in substitution for the European Communities (Introduction of Organisms Harmful to Plants or Plant Products) (Prohibition) Regulations 1980 (S.I. No. 125 of 1980).

GIVEN under my Official Seal,
23rd September 2004

L.S.

Joe Walsh
Minister for Agriculture and Food

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation)

These Regulations amend existing Regulations on provisional emergency phytosanitary measures to prevent the introduction into and the spread within the Community of *Phytophthora ramorum* Werres, De Cock & Man in't Veld sp. nov. (Sudden Oak Death)

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