STATUTORY INSTRUMENTS

1974 No. 830

PLANT HEALTH

The Dutch Elm Disease (Local Authorities) Order 1974

Made - - -	13*th May* 1974
Laid before Parliament	21*st May* 1974
Coming into Operation	15*th June* 1974

The Forestry Commissioners, by virtue and in exercise of the powers vested in them by sections 3(1), (2) and (4) and 5(1) of the Plant Health Act 1967(**a**), as amended by section 92(2) of, and Part II of Schedule 3 to, the Criminal Justice Act 1967(**b**) and by section 4(1) of, and paragraph 8(1) and (3) of Schedule 4 to, the European Communities Act 1972(**c**), and as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972(**d**), and of every other power enabling them in that behalf, hereby make the following Order:—

Citation and commencement

1. This Order, which may be cited as the Dutch Elm Disease (Local Authorities) Order 1974, shall come into operation on 15th June 1974.

Interpretation

2.—(1) In this Order—

"appointed officer" means a person appointed by a Council in accordance with Article 4(1) of this Order;

"Council" means a local authority to which this Order applies;

"elms" means trees of the genus Ulmus and, except where the context otherwise requires, includes elms which have been felled or any parts thereof;

"premises" includes land;

"the disease" means the disease in elms caused by the fungus *Ceratocystis ulmi,* and commonly known as Dutch elm disease.

(2) The Interpretation Act 1889(**e**) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Application

3. The local authorities to which this Order applies are the local authorities mentioned in the Schedule to this Order.

(**a**) 1967 c. 8. (**b**) 1967 c. 80. (**c**) 1972 c. 68. (**d**) 1972 c. 62. (**e**) 1889 c. 63.

Appointment and powers of appointed officers

4.—(1) For the purpose of performing their functions under this Order a Council may appoint such persons as they think fit to exercise within their area the powers of an appointed officer under this Order.

(2) An appointed officer, upon production if so required of a duly authenticated document showing his authority, may enter upon any land in the area of the Council for any purpose connected with the execution of this Order.

(3) An appointed officer who has entered upon any land as aforesaid may—

(*a*) examine, by removing bark, cutting into the wood or otherwise, any elms on the land and may mark any such elm as appears to him to be infected with the disease and may cut off or otherwise detach and take away any part of any elm;

(*b*) cut down, cut off or otherwise detach or cause to be cut down, cut off or otherwise detached any elms which are infected with the disease or which the appointed officer suspects on reasonable grounds of being so infected or any parts of such elms;

(*c*) destroy by fire on the said land or elsewhere, or cause to be so destroyed elms or any parts thereof which shall not have been made free of bark and which are present on the said land (whether or not so present in consequence of the exercise by the appointed officer of the powers given to him by sub-paragraph (*b*) of this paragraph) being elms, or parts thereof, which are infected with the disease or which the appointed officer suspects on reasonable grounds of being so infected.

(4) An appointed officer entering upon any land for any purpose connected with the execution of this Order may be accompanied by such other persons acting under his instructions and such equipment as appear to him to be necessary, and such other persons, whether or not accompanied by the appointed officer, may remain on the land and carry out such work for the purpose aforesaid as he may direct and may from time to time re-enter on the land with such equipment as aforesaid for the purpose of carrying out the said work.

Further powers to prevent spread of infection

5.—(1) A Council, on being satisfied that the disease is present in any elms in their area, may serve upon the occupier of any land upon which the elms are situated or upon any person in whose control or management the elms appear to be a notice requiring him within such time or during such period as may be prescribed in the notice to do one or more of the following things, namely—

(*a*) to cut down to ground level any elms specified in the notice;

(*b*) to cut off or otherwise detach such parts of any elms as shall be specified in the notice;

(*c*) at the option of the person on whom such notice is served either

(i) to destroy by fire on the said land such elms or such parts of any elms as are cut down, cut off or otherwise detached in compliance with a requirement made in accordance with sub-paragraph (*a*) or

(*b*) of this paragraph (such elms or such parts of any elms being hereinafter referred to as "the wood") or,

(ii) subject to the Dutch Elm Disease (Restriction on Movement of Diseased Elms) Order 1974(**a**), to remove from the said land the wood or any part thereof, and to destroy or cause to be destroyed by fire at the place to which the wood or such part thereof shall be removed all parts thereof which shall not have been made free of bark and any bark detached from the wood or any part thereof, and to destroy by fire on the said land all parts of the wood which are not removed from the said land;

(*d*) to destroy by fire on the said land any elms specified in the notice;

(*e*) to treat in such manner as may be specified in the notice any elms or such parts of any elms as shall be specified in the notice; and

(*f*) to take such other steps for the prevention of spread of the disease as may be prescribed in the notice.

(2) A notice served pursuant to paragraph (1) of this Article may at any time be amended or withdrawn by a further notice in writing served upon the person on whom the first notice was served.

(3) Nothing in this Order shall prevent any person upon whom a notice has been served under paragraph (1) or (2) of this Article from completely destroying by fire on the land where they are present any elms in respect of which the notice has been served upon him, and if he shall so destroy them he shall be deemed to have complied with the notice so far as it relates to those elms.

(4) If upon an inspection by an appointed officer it shall appear that any person shall have failed to carry out the requirements of a notice served pursuant to paragraph (1) or (2) of this Article within the time or during the period prescribed in such notice then, without prejudice to any proceedings under this Order consequent upon such failure, an appointed officer may enter on any premises in which any elms the subject of the said notice are, and carry out such requirements, provided that in the case of a requirement made in accordance with paragraph (1)(*c*) of this Article the appointed officer may at his discretion carry out either the first or the second alternative of such requirement; and the cost of so carrying out such requirements shall be recoverable by the Council as a debt due from the person on whom the notice was served.

Reports to Forestry Commissioners

6. A Council shall, when required by the Forestry Commissioners, furnish to them a report of any action taken by the Council under this Order.

Service of Notices

7. For the purposes of this Order, a notice shall be deemed to be duly served on any person if it is delivered to him personally, or left for him at his last known place of abode or business, or sent through the post in a letter addressed to him there.

(**a**) S.I.1974/767 (1974 II, p. 2991).

Offences

8. Any person who—

(i) fails to comply with any requirement of a notice served under Article 5 of this Order; or

(ii) fails to give an appointed officer, or a person acting under his instructions, all reasonable facilities to enable him to exercise his powers under this Order; or

(iii) wilfully obstructs or impedes an appointed officer in the exercise of his powers under this Order or a person acting under his instructions for any purpose connected with the execution of this Order,

shall be guilty of an offence against this Order and shall be liable on conviction to a penalty not exceeding £100 or, in respect of a second or subsequent offence, a penalty not exceeding £200.

Enforcement of Order

9. This Order shall be enforced by a Council as respects their own area.

IN WITNESS whereof the Official Seal of the Forestry Commissioners is hereunto affixed on 13th May 1974.

(L.S.)

J. M Hunter,

Secretary to the
Forestry Commissioners.

THE SCHEDULE

LOCAL AUTHORITIES TO WHICH THIS ORDER APPLIES

Cheshire	Derbyshire	Isle of Wight
Cleveland	Devon	Mid Glamorgan
Cornwall	Durham	South Glamorgan
		Lincolnshire

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, made by the Forestry Commissioners under the Plant Health Act 1967, gives powers to the Councils of certain local authorities specified in the Schedule to the Order to take steps in connection with the disease of elm trees known as Dutch elm disease.

An officer appointed by such a local authority may enter land and inspect elm trees, standing or felled, and may take action, extending if need be to the destruction of the trees, to prevent the spread of the disease.

If there are infected elm trees on any land the occupier or other responsible person may be served with a notice by the local authority requiring the destruction of the whole or part of such trees and the taking of steps to prevent the spread of the disease. If such a notice is not complied with the necessary work may be carried out by an appointed officer and the cost recovered from the person in default. In addition failure to comply with such a notice is an offence.

Each local authority may enforce the Order within their own area.

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