STATUTORY INSTRUMENTS

1977 No. 1074

PLANT HEALTH

The Dutch Elm Disease (Local Authorities) Order 1977

Made - - - -	*27th June* 1977
Laid before Parliament	*12th July* 1977
Coming into Operation	*2nd August* 1977

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 1977, shall come into operation on 2nd August 1977.

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 and parts of elms;

"premises" includes land;

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

"the Order of 1974" means the Dutch Elm Disease (Local Authorities) Order 1974**(e)** as amended**(f)**;

"the Order of 1977" means the Dutch Elm Disease (Restriction on Movement of Elms) Order 1977**(g)**.

(2) The Interpretation Act 1889**(h)** shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament and as if this Order and the Orders hereby revoked were Acts of Parliament.

Application

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

(a) 1967 c. 8. **(b)** 1967 c. 80. **(c)** 1972 c. 68. **(d)** 1972 c. 62.
(e) S.I. 1974/830 (1974 II, p. 3230).
(f) The relevant amending instruments are S.I. 1974/1816, 1975/55, 1163, 1905, 1976/975 (1974 III, p. 6366; 1975 I, p. 165; II, p. 4026; III, p. 7112; 1976 II, p. 2548).
(g) S.I. 1977/1075 (1977 II, p. 3046). **(h)** 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) Subject to giving prior notice as required by paragraph (4) of this Article or paragraph (4) of Article 5 below before entering upon any land for the purpose of carrying out any work mentioned in the said paragraphs, 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 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 for the purpose of further examination or tests.

(4) Without prejudice to paragraph (3) of this Article, after giving to the occupier of any land as aforesaid not less than seven days notice of his intention to enter on the said land, an appointed officer may—

(*a*) 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;

(*b*) destroy by fire on the said land or (subject to the Order of 1977) remove from the said land and destroy by fire elsewhere, or cause to be so destroyed or removed and destroyed, elms 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 (*a*) of this paragraph) being elms which are infected with the disease or which the appointed officer suspects on reasonable grounds of being so infected.

(5) 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 by such equipment as appear to him to be necessary, and such other persons, whether or not accompanied by the appointed officer, upon production if so required of their authority in that behalf given by the Council or the appointed officer on the Council's behalf, may remain on the land, and from time to time re-enter with such equipment as aforesaid, and carry out such work for the purpose aforesaid and in such manner as he may direct.

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 in writing 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 for such cutting-down in the notice;

(*b*) to cut off or otherwise detach such parts of any elms as shall be specified for such action 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 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 elms being hereinafter referred to as "the wood") or,

(ii) subject to the Order of 1977, 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 for such destruction in the notice;

(*e*) to treat in such manner as may be described in the notice any elms specified for such treatment 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 paragraph (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 paragraph (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, after giving the occupier of premises in which any elms mentioned in the said notice are located not less than seven days notice of his intention so to do, may enter on the said premises 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 (subject to the Order of 1977) 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.

Form and content of notices of intended entry

6. A notice of intended entry given under Article 4(4) or Article 5(4) above shall be in writing and shall state the purpose of the intended entry and, if such be the case, that the appointed officer may be accompanied by other persons acting under his instructions and by equipment.

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.

Reports to Forestry Commissioners

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

Offences

9. Any person who—

(i) fails to comply with any requirement of a notice served under Article 5(1) of this Order or of such a notice as amended by a further notice under Article 5(2) 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 summary conviction to a penalty not exceeding £100 or, in respect of a second or subsequent offence, a penalty not exceeding £200.

Enforcement of Order

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

Revocation and Transitional Provisions

11.—(1) The Orders specified in the Second Schedule hereto are hereby revoked.

(2) Any person who immediately before the commencement of this Order was an appointed officer as defined in and for the purposes of the Order of 1974, being a person appointed by a local authority to which both the Order of 1974 applied and this Order applies, shall be an appointed officer for the purposes of this Order as if his appointment had been made under Article 4(1) of this Order.

(3) Any notice served pursuant to Article 5(1) of the Order of 1974, or any such notice as amended by a further notice under Article 5(2) of the said Order, prescribing a time or period for the doing of one or more things specified in the said notice or, as the case may be, the said notice as amended, which shall not have expired at the commencement of this Order shall have effect as if served under Article 5(1) of this Order and for that purpose this Order shall have effect as if it had been in force when the notice and the further notice, if any, was served.

IN WITNESS whereof the Official Seal of the Forestry Commissioners is hereunto affixed on 27th June 1977.

(L.S.)

P. J. Clarke,
Secretary to the Forestry Commissioners.

Article 3. **THE FIRST SCHEDULE**

LOCAL AUTHORITIES TO WHICH THIS ORDER APPLIES

The Councils of the following local government areas:—

Counties

Berkshire
Cheshire
Cleveland
Clwyd
Cumbria
Derbyshire
Devon
Dorset
Durham
East Sussex
Gwynedd
Humberside
Isle of Wight
Lancashire
Leicestershire
Lincolnshire
Northumberland
North Yorkshire
Nottinghamshire
Powys
West Glamorgan
West Sussex

Districts

Barnsley
Bolton
Bradford
Bury
Calderdale
Doncaster
Gateshead
Kirklees
Knowsley
Leeds
Liverpool
Manchester
Newcastle-upon-Tyne
Oldham
North Tyneside
Rochdale
Rotherham
Salford
Sefton
Sheffield
South Tyneside
St. Helens
Stockport
Sunderland
Tameside
Trafford
Wakefield
Wigan
Wirral

Regions

Borders
Central
Dumfries and Galloway
Fife
Grampian
Highland
Lothian
Strathclyde
Tayside

Article 11(1). **THE SECOND SCHEDULE**

References	*Orders Revoked*
The Dutch Elm Disease (Local Authorities) Order 1974	S.I. 1974/830 (1974 II, p. 3230)
The Dutch Elm Disease (Local Authorities) (Amendment) Order 1974	S.I. 1974/1816 (1974 III, p. 6366)
The Dutch Elm Disease (Local Authorities) (Amendment) Order 1975	S.I. 1975/55 (1975 I, p. 165)
The Dutch Elm Disease (Local Authorities) (Amendment) (No. 2) Order 1975	S.I. 1975/1163 (1975 II, p. 4026)
The Dutch Elm Disease (Local Authorities) (Amendment) (No. 3) Order 1975	S.I. 1975/1905 (1975 III, p. 7112)
The Dutch Elm Disease (Local Authorities) (Amendment) Order 1976	S.I. 1976/975 (1976 II, p. 2548)

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, made by the Forestry Commissioners under the Plant Health Act 1967, revokes and re-enacts with minor modifications the Dutch Elm Disease (Local Authorities) Order 1974 as amended by later Orders which successively specified additional local authorities to which that Order applied. This Order sets out in the First Schedule all the local authorities to which it applies. Certain local authorities to which the 1974 Order applied are omitted; these are the Councils of the Counties of Cornwall, Mid Glamorgan and South Glamorgan. The Council of the County of West Sussex has been added.

The Order empowers the local authorities specified in the Schedule to take certain steps to prevent the spread of Dutch elm disease. Each local authority may enforce the Order within their own area.

An officer appointed by such a local authority may enter on land and inspect elm trees, standing or felled, and take away parts for tests and, after giving the occupier prior notice, may enter on the land and take action, extending if need be to the destruction of the trees by fire, either on the land or elsewhere, to prevent the spread of the disease. The Dutch Elm Disease (Restriction on Movement of Elms) Order 1977 prohibits the movement of elm with bark attached from areas listed in the Schedule to that Order and the movement of such elm along or across highways, or by rail or water in any areas not so listed. An exception to the latter permits such movement of an elm by an appointed officer for the purpose of destruction by fire pursuant to Articles 4(4) and 5(4) of this Order provided that the movement is restricted to a radius of five miles from the location of the elm and that in the course of such movement the elm is not moved from an area listed in the Schedule to that Order into an area not so listed.

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 which may require the destruction of the whole or part of such trees and the taking of other specified 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 after giving the occupier prior notice, and the local authority may recover the cost from the person in default. In addition, failure to comply with such a notice is an offence.

For the purpose of carrying out his functions under the Order an appointed officer may, on entering land, be accompanied by other persons acting under his instructions, and by equipment, and those persons, upon production of their authority if so required, may remain on the land, and may also re-enter, to carry out the work as directed by the appointed officer.

The Order also contains transitional provisions.

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