STATUTORY INSTRUMENTS

1974 No. 767

PLANT HEALTH

The Dutch Elm Disease (Restriction on Movement of Diseased Elms) Order 1974

Made - - -	*1st May* 1974
Laid before Parliament	*9th May* 1974
Coming into Operation	*1st June* 1974

The Forestry Commissioners, by virtue and in exercise of the powers vested in them by section 3(1), (2) and (4) 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 all other powers 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 (Restriction on Movement of Diseased Elms) Order 1974, shall come into operation on 1st June 1974 and shall apply to Great Britain.

Interpretation

2.—(1) In this Order unless the context otherwise requires—

"area" means a non-metropolitan county, a metropolitan district, a London borough or the City of London;

"City of London" includes the Inner Temple and the Middle Temple;

"elm" means the trunk or any branch of a felled or fallen tree of the genus Ulmus or any part thereof, or any part severed from a standing tree of that genus;

"highway" means a way over which the public have a right of way for the passage of vehicles;

"inspector" means any person authorised by the Forestry Commissioners for the purposes of this Order;

"non-scheduled area" means any area in Great Britain not specified in Schedule 1;

"premises" includes land and any vehicle, vessel or freight container;

"scheduled area" means any area specified in Schedule 1;

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

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

(2) Any references in this Order to a numbered article or schedule are references to the article or schedule so numbered in this Order.

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

Restriction on the movement of diseased elms

3.—(1) Except as provided by paragraph (2) of this Article—

(*a*) no diseased elm which is in a scheduled area shall be moved out of that area into or across a non-scheduled area, and

(*b*) no diseased elm which is in a non-scheduled area shall be moved along or across a highway or by rail or water,

unless the conditions specified in Schedule 2 have been complied with.

(2) The restriction on the movement of diseased elm imposed by paragraph (1) of this article shall not apply to the movement of any elm—

(*a*) by an inspector in the exercise of his powers under Articles 4(2)(*a*) or 5(3), or by any person acting under his instructions for any purpose connected with the execution of this Order, or

(*b*) which is required or authorised under Article 5(2).

Examination and sampling

4.—(1) An inspector, upon production if so required of his authority, may enter upon any premises for any purpose connected with the execution of this Order.

(2) An inspector who has entered upon any premises as aforesaid—

(*a*) may examine, by removing bark, cutting into the wood or otherwise, any elm on the premises, and may cut off or otherwise detach and take away for further examination any part of such elm,

(*b*) may examine and take away for further examination any fungus or insect in, on or in the vicinity of any such elm, and

(*c*) if he suspects that any elm is diseased may, for the purposes of any such further examination, by notice served on the owner or person in charge of such elm prohibit any movement thereof.

(3) When the further examination of an elm in respect of which a notice has been served under paragraph (2)(*c*) above has been completed the Forestry Commissioners shall give written notification of the result of that examination to the person on whom the said notice was served, and thereupon the said notice shall cease to have effect.

Procedure when elms are moved in contravention of this Order

5.—(1) The Forestry Commissioners or an inspector, on being satisfied that a diseased elm is being, has been or is about to be moved in contravention of this Order, may serve upon the owner or person in charge of the diseased elm a notice requiring him to treat or destroy it in such manner and within such time as may be specified in the notice.

(2) Any treatment or destruction required by paragraph (1) of this Article shall be carried out to the satisfaction of an inspector at a place designated by him and, except with the written authority of the Forestry Commissioners or

(**a**) 1889 c. 63.

an inspector, no elm in respect of which a notice has been served under the said paragraph (1) shall be moved other than to such place.

(3) If any person shall have failed to carry out the requirements of a notice served pursuant to paragraph (1) of this Article then, without prejudice to any proceedings under this Order consequent upon such failure, an inspector may enter on any premises in which the diseased elm the subject of the said notice is, and may remove and destroy it, and the expenses incurred in connection with such removal and destruction shall be recoverable by the Forestry Commissioners as a debt due from the person on whom the notice was served.

(4) An inspector entering upon any premises 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 inspector, may remain on the premises and carry out such work for the purpose aforesaid as he may direct and may from time to time re-enter on the premises with such equipment as aforesaid for the purpose of carrying out the said work.

Information and production of records

6.—(1) The Forestry Commissioners or an inspector may require any person who has or has had a diseased elm in his possession or under his charge—

(*a*) to produce such books, accounts, invoices or records (if any) as he possesses relating to the said elm, its movement, purchase and sale, and

(*b*) to give such information (if any) as he possesses relating to its purchase or sale, and as to the identity of any person who has or has had the said elm in his possession or under his charge.

(2) Any information given under sub-paragraph (*b*) of paragraph (1) above shall not be available as evidence against the person giving the same in any prosecution under this Order, except in respect of an alleged failure to comply with that sub-paragraph.

Service of notices

7. For the purposes of this Order a notice shall be deemed to be duly served on, and a written notification shall be deemed to be given to, 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.

Offences

8. Any person who—

(*a*) does any act in contravention of this Order, or

(*b*) fails to comply with the requirements of a notice served under Article 4(2)(*c*) or 5(1) of this Order, or

(*c*) fails to comply with the requirements of the Forestry Commissioners or an inspector under Article 6 of this Order, or

(*d*) wilfully obstructs or impedes an inspector 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, to a penalty not exceeding £200.

IN WITNESS whereof the Official Seal of the Forestry Commissioners is hereunto affixed on 1st May 1974.

(L.S.) *J. M. Hunter,*
Secretary to the Forestry Commissioners.

Article 2(1) SCHEDULE 1

AREAS FROM WHICH THE MOVEMENT OF DISEASED ELM IS RESTRICTED

1. The City of London

2. London Boroughs

Barking	Hammersmith	Merton
Barnet	Haringey	Newham
Bexley	Harrow	Redbridge
Brent	Havering	Richmond-on-Thames
Bromley	Hillingdon	Southwark
Camden	Hounslow	Sutton
Croydon	Islington	Tower Hamlets
Ealing	Kensington and Chelsea	Waltham Forest
Enfield	Kingston-on-Thames	Wandsworth
Greenwich	Lambeth	Westminster
Hackney	Lewisham	

3. Non-Metropolitan Counties

Avon	Gwent	Salop
Bedfordshire	Hampshire	Somerset
Berkshire	Hereford and Worcester	Staffordshire
Buckinghamshire	Hertfordshire	Suffolk
Cambridgeshire	Isle of Wight	Surrey
Dorset	Kent	Warwickshire
East Sussex	Norfolk	West Sussex
Essex	Northamptonshire	Wiltshire
Gloucestershire	Oxfordshire	

4. Metropolitan Districts

Birmingham	Solihull
Coventry	Walsall
Dudley	Wolverhampton
Sandwell	

Article 3 SCHEDULE 2

CONDITIONS SUBJECT TO WHICH THE MOVEMENT OF DISEASED ELM IS PERMITTED

Either—

(*a*) the bark of the elm shall have been removed, or

(*b*) the elm shall have been disinfected against vectors of the disease by spraying with an emulsion or solution of lindane suspended or diluted in premium grade paraffin, diesel oil or gas oil, applied to the bark at the rate of 1 gallon per 100 square feet and so as to cause thorough wetting of all the bark.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order restricts the movement in Great Britain of elm infected with Dutch Elm disease by providing that no diseased elm shall be moved—

(*a*) out of the areas listed in Schedule 1, or

(*b*) from any place within any area not listed in that Schedule to any other place by a highway, by rail or water,

unless the conditions laid down in Schedule 2 have been met.

The Order empowers the Forestry Commissioners or an inspector, if satisfied that any diseased elm is, has been or is about to be moved in contravention of this Order, to serve a notice on the owner or person in charge of it requiring its destruction or treatment. If the requirements of such a notice are not fulfilled, the necessary work may be carried out by an inspector and the expenses incurred recovered from the person in default.

In addition, the Order gives certain powers of entry and examination to inspectors, prescribes penalties for its contravention, and provides for the furnishing of information and the production of records relating to diseased elms.

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