



Department  
for Environment  
Food & Rural Affairs

# The Plant Health (Sweet Chestnut Blight) (England) Order 2017

Post Implementation Review

Date: 20 October 2023

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## Introduction

In 2017 the Secretary of State, in exercise of powers conferred by sections 3(1), (2) and (4) and 4(1) of the Plant Health Act 1967, established The Plant Health (Sweet Chestnut Blight) (England) Order 2017 (The Order). The Order came into force on 21<sup>st</sup> February 2017 (S.I. 2017/178).

An outbreak of sweet chestnut blight (caused by the ascomycete fungus *Cryphonectria parasitica*), a regulated organism, was confirmed in Devon in December 2016. At that time, the UK had Protected Zone status meaning the disease was not considered present and we were obliged to take action to contain or eradicate the disease and preserve the UK Protected Zone status. The Plant Health (Sweet Chestnut Blight) (England) Order 2017 was developed to include movement restrictions on sweet chestnut blight susceptible material (trees, plants for planting, wood or bark of sweet chestnut and/or oak), enforcement powers for inspectors (power to enter premises etc.) and offence provisions relating to breaches of the movement restrictions in order to limit spread of the disease. The SI mirrored existing provisions in the Plant Health (England) Order 2015 and Plant Health (Forestry) Order 2015, and introduced new offences, and penalties.

This report meets the legal requirement of sections 7(1), (2) and (4) of The Order to carry out a regulatory review of the provision contained in The Order. This includes an assessment of whether the intended objectives of The Order were achieved and whether these remain appropriate.

## Policy Objectives

The primary objective of The Order is to extend movement restrictions on susceptible material to demarcated areas around sweet chestnut blight outbreak sites to reduce the risk of spread of the disease following an initial outbreak in 2016-2017. The Order is required to ensure a consistent approach to application of eradication measures against a regulated organism that requires statutory action against it. The disease can be spread by movement of small volumes of susceptible material, hence the need to ensure that all relevant individuals and businesses comply with the necessary requirements. These restrictions were required whilst research and tracing exercises were carried out to fully understand the likelihood of spread of the disease and its potential impact. The regulation applies to all persons in an area where the presence of sweet chestnut blight has been confirmed, to limit spread of sweet chestnut blight.

This is brought about by establishment of demarcated areas that prohibit the movement of susceptible material of *Castanea sativa* and *Quercus* L., unless authorised by a plant health inspector. The Order also enables inspectors to have the powers of entry and inspection of any premises where there are reasonable

grounds to suspect susceptible material is being moved or has been moved. It also sets out provisions relating to enforcement and offences for contravening The Order.

## Review approach

When considering the appropriate level of analysis suitable for this Post Implementation Review (PIR), the following key points were considered:

- Demarcated area notices issued under The Order have not been in use to manage sweet chestnut blight outbreaks since March 2018.
- The provisions established by The Order were used for a short period of 13 months as an emergency, precautionary approach to prevent spread. A greater understanding of disease behaviour resulted in a change in approach to management through the use of individual Statutory Plant Health Notices (SPHN) where appropriate. The Order is no longer actively in use.
- The statutory function of The Order is now provided through post EU exit legislation contained within The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019. As such, it is intended that following this PIR this regulation be repealed to avoid duplication of powers following consultation with the Better Regulations Team and on the basis of legal advice.

Based on these key points and following advice from the Better Regulation team in Defra, a light touch approach to this review was adopted.

## Evidence sources and data collection methods

The Cross Government Evaluation Group recommends a desk-based exercise for regulations with an annual net impact of less than £10m, therefore this method was adopted.

A high-level analysis of existing documentation was conducted alongside direct engagement with Forestry Commission and Animal and Plant Health Agency teams who were directly involved in implementation of the Regulation. The Forestry Commissioners co-signed the Order alongside the Secretary of State and carried out inspections, managing any action at infected outbreak sites and the wider environment.

The Animal and Plant Health Agency (APHA) carry out plant health inspections, process movement applications from nursery and trade sites under restrictions and issue plant passports that enable movement of plants and plant products. A database search was commissioned through APHA to understand if any movement

applications or outbreaks at nursery sites had been identified through the Plant Health and Seeds Inspectorate and to identify any stakeholders which may have been impacted. We also contacted those leading on Forestry Commission operations at that time to understand if they were any movement licences or applications made to move material from any non-horticultural trade sites within the demarcated areas.

Ministerial submissions, situation reports, Local Incident Reports, maps and existing records of clients in the area, form the basis of the review. The Horticultural Trade Association (HTA) were also contacted to identify any members in the impacted area for potential engagement and provision of additional data. The HTA could not identify any registered members trading in the affected areas. Consultation with APHA, Forestry Commission and the HTA did not identify a suitable number of stakeholders to carry out direct engagement and therefore the use of stakeholder questionnaires to gather additional data was not pursued.

## Implementation and compliance

The analysis centred around five research questions to assess the impact and consequences of the policy and assess whether the objectives of the policy were and continue to be achieved.

### **Are the requirements of the Plant Health Order (Sweet Chestnut Blight) (England) 2017 successfully applied?**

The requirements of The Order were implemented as part of a package of actions in immediate response to findings of sweet chestnut blight at various sites across England. The regulation provided a means to swiftly restrict movement of susceptible material around an outbreak site to prevent the risk of spread through establishing demarcated area notices around outbreak sites. The intention was to provide an immediate impact to reduce the risk of spread whilst more information was gathered on the impact and potential spread of the disease.

A total of six demarcated areas were established under the requirements of the Order (Annex B). These restricted the movement of any susceptible material of *Castanea sativa* or *Quercus L.* out of or within the infested area specified in the notice, or any susceptible material of *Castanea sativa* out of or within any controlled area specified in the notice. Notices issued under the Regulation were revised based on results of ongoing scientific research into pathogenicity to ensure the Regulation was proportionately applied whilst meeting EU obligation to take action to achieve eradication.

The notices were in place for a total of 13 months before being revoked. This met the intention of the application of The Order in that they provided a means to restrict movement of susceptible material from infection sites to prevent further spread following an initial outbreak whilst a long-term management strategy was developed.

The Order sets out a prohibition on movement of susceptible material without pre-authorization from a plant health inspector. A Standard Operating Procedure and licensing protocol were established to fulfil the requirement of written authorised approval from an inspector for any movement of material within areas subject to demarcated area notices. These were prepared but not applied in practice as according to our existing records and consultation with Forestry Commission who authorise any movement, no applications were made.

The Order establishes enforcement powers for inspectors and offence provisions relating to breaches of the movement restrictions. There were no breaches to the application of The Order recorded, in relation to the 2017 notices, therefore enforcement powers have not been used.

The available evidence suggests the regulation was effective in providing an emergency precautionary response, providing powers to limit the movement of material that may have enabled spread of infection. No movement of susceptible material from the demarcated areas was identified when undertaking this analysis.

The regulation is also effective in allowing a case-by-case, adaptable approach to management, providing powers to restrict material only where it is deemed necessary. For example, a decision was taken not to implement demarcated areas under The Order for later infestations found in London in June/July 2017 because an assessment deemed the risk of spread from these areas was low (confined trees in urban parks for example, with minimal/no chance of movement). The regulation was intended to be adaptable and it was applied as such dependent on the level of associated risk.

### **Do stakeholders have a common understanding of the requirements of the regulations?**

The primary stakeholders impacted by the demarcated areas were identified as land managers or landowners and those stakeholders with positive findings within the demarcated areas who received direct communications from Forestry Commission and APHA of the restrictions implemented by The Order.

Proactive communications took place at the time to publicise the prohibitions of the notices implemented under The Order. This included notifying key stakeholders affected, issuing a factual press release to local trade press and updating the website.

An issue identified by one landowner indicates a good understanding of the implemented restrictions. They raised a concern focused on the firewood business operating from the estate that brought firewood, including oak (one of the restricted materials) onto the premises and also utilised firewood including oak (but generally not chestnut) from the estate. The Incident Management Reports evidence that this stakeholder was in direct communications with Forestry Commission around the restrictions imposed and the concern was clarified as not being impacted by The Order.

Ahead of the regulation coming into force, a wholesale nursery trading in oak trees (not sweet chestnut) raised that there would be a significant economic impact to their business as a direct consequence of establishing a proposed demarcated area that would include their premises. With the proposed demarcated area to be implemented under The Order, no oak trees could be brought to site and collected by customers, therefore purchase orders could not be fulfilled. Trade in oak made up approximately 50% of all orders for the business so could have a detrimental impact if the demarcated area and associated restrictions were established. Holding stock at an alternative site outside the demarcated area was not deemed reasonable for a number of reasons including the increase in costs incurred due to accessibility issues, security and inconvenience to customers.

The local APHA Plant Health and Seeds Inspectorate worked with the client to detail the specific concerns ahead of time and agreed a way forward that would meet the biosecurity requirements in reducing risk, whilst also ensuring impacts to their trade were minimal and the demarcated area could be established. This approach was reviewed by the Incident Management Team as an acceptable way forward. As such this issue was resolved.

No other impacts to stakeholders were identified as a direct result of the Regulations.

As part of this review, we engaged with the Horticultural Trade Association (HTA). They established that no HTA members were identified in the demarcated areas. They confirmed that this was as expected due to the size and the location of the demarcated areas which did not encompass any of their members trade sites. Given HTAs extensive membership of 1,400 garden retailers, growers, manufacturers and landscapers across the UK, this further supports our understanding that there were no significant trade impacts through the implementation of the regulation.

### **Were restrictions under the regulation successfully applied in practice?**

When consulted on this, neither the Plant Health Inspectorate nor the Forestry Commission have identified any breaches of the restrictions specified within The Order. Our analysis has not identified any other impacted landowners or businesses outside of the direct stakeholder engagement detailed above.

The demarcated areas established were no larger than 5km around an outbreak site and were in place for a limited time before being further reduced. This further minimised any widespread impact to any landowners in the affected area.

All plant passporting nurseries or garden centres dealing with sweet chestnut or oak material were identified within the demarcated areas. From available records dating back to 2017 of clients within the 5km DMA zone, only three were identified as trading in sweet chestnut, all received a visit and none were recorded as having sweet chestnut or oak on site. From Situation Report records, no non-compliance issues were identified and stakeholders were directly informed of any impacts and implications in advance of the demarcated zones coming into force.



Given there are no records of movement applications made in relation to this regulation, despite all clients registered as professional operators within the demarcated areas receiving a visit from APHA's Plant Health and Seeds Inspectorate, it was concluded that the restriction on movement of susceptible material within the demarcated areas was applied in practice.

### **Are the requirements of the regulation still proportionate?**

The Order details provisions that could be used in response to an outbreak of sweet chestnut blight and are proportionate in that they allow for an adaptable, risk-based approach to implementing the powers. The policy was kept under continual review following the initial disease outbreaks to ensure it remained proportionate to the level of risk to sweet chestnut and oak trees. Evidence gathered through extensive monitoring eventually showed that disease spread was limited and only a single mating type was present on most sites. These sites were under active management and infected trees removed.

As such a decision was made in 2018 to revoke any demarcated area notices issued under the regulation in favour of a case-by-case approach of issuing Statutory Plant Health Notices (SPHN) to specific infection sites.

### **Can the objectives of the regulation be achieved in a less burdensome way?**

This regulation now forms part of EU retained law, supported by domestic legislation Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulation 2019, which supersedes Plant Health Order (Sweet Chestnut Blight) (England) 2017. Therefore, this regulation can now be repealed as its objective can be achieved through provisions in the broader Official Control Regulation 2019.

The objective remains to eradicate and contain the spread of sweet chestnut blight from infection sites, however the policy approach has evolved to issuing a Statutory Plant Health Notice (SPHN) for each infection site and we no longer implement restrictions on the surrounding areas through use of this regulation. The policy for sweet chestnut blight management has become less burdensome for stakeholders surrounding infected areas, but this has only been possible through continual research and monitoring of the disease over time.

## **Conclusions**

When implemented between 2017 and 2018, the Order was considered effective as part of a package of tools that provided an emergency response following an outbreak of sweet chestnut blight in an EU Protected Zone. Given the lack of trade in the impacted areas, the impacts to stakeholders were minimal with no cases identified where restricted material needed to be or was moved out of the demarcated areas under restriction. At the time a precautionary approach needed to be taken whilst the disease was better understood as if sweet chestnut blight were to

have established, it could have caused significant damage to our stocks of sweet chestnut trees, which provide a range of commercial, environmental and social benefits across the country (estimated at the time to be valued at over £40m each year). Regulations were also required as *Cryphonectria parasitica* is a regulated organism requiring statutory action against it. The use and proportionality of The Order was continually reviewed and as such no longer actively in use from mid-2018.

Since its initial implementation, this regulation is now effectively redundant through measures carried out post EU exist. The existing provisions within The Order are now superseded through The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 which now provided the same provisions without the necessity of drafting pest specific Regulations.

As such it has been concluded that this regulation should be repealed.

## Limitations

The policy was implemented for a short period in 2017, historical documents have supported this review but identifying impacted stakeholders, sourcing direct feedback or further documentation on a historic policy was not considered proportionate. Since The Order initially came into force, data storage policies and database systems have evolved so it has not been possible to trace every record associated with this policy. However we believe the analysis of available records is sufficient in assessing impact because the policy will not be implemented through this existing regulation in the future.

The limitations around data availability and record keeping have identified the need to ensure a collated database of clients and movement applications within demarcated areas and to review data whilst demarcated area notices are in place and as soon as notices are revoked to monitor effectiveness. Similar policies should focus on collation of data whilst the policy is active.

# Annex A: PIR cover sheet

<b>Title:</b> Plant Health Order (Sweet Chestnut Blight) (England) 2017 <b>PIR No:</b> N/A  <b>Original IA/IPC No:</b> <a href="#">Click here to enter text.</a> <b>Lead department or agency:</b> Defra <b>Other departments or agencies:</b> Forestry Commission  Contact for enquiries: plantpestrisks@defra.gsi.gov.uk	<b>Post Implementation Review</b>
	<b>Date:</b> 20/10/2023
	<b>Type of regulation:</b> Domestic
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 21/02/2017
	<b>Recommendation:</b> Repeal
<b>RPC Opinion:</b> N/A	

## 1. What were the policy objectives of the measure?

To provide powers to introduce measures for the control of *Cryphonectria parasitica*, a fungal disease causing sweet chestnut blight in England.

These included measures to demarcate an area in relation to an infestation to prevent the movement of susceptible material (sweet chestnut and oak) without pre-authorization from a plant health inspector. The Order also contains provisions relating to inspections and offences. The policy aim was to prevent disease spread through implementing movement restrictions and therefore protect trade, industry and the environment against the damaging impacts of the disease.

## 2. What evidence has informed the PIR?

A desk-based exercise was conducted as per the Cross Government Evaluation groups recommendation for regulations with annual net impact <£10m. Utilising historical documents including Government Local Incident Action reports, Situation Reports, Ministerial submissions, records of client information, official demarcated area notices and outbreak maps. Informal consultation with Forestry Commissioners, Animal and Plant Health Agency and with the Horticultural Trade Association (HTA) was undertaken to identify any potential impacted businesses through their membership.

## 3. To what extent have the policy objectives been achieved?

The available data and analysis concludes that the policy objectives were achieved. The legislation allowed for the introduction of specific measures to control *Cryphonectria parasitica* through the introduction of a demarcated area with movement restrictions. There are no records of restricted material being moved from infected sites that could have enabled further spread, therefore meeting the policy requirements. However, there are areas for improvement for reassurance, including keeping collated, complete records in one place to identify all potential stakeholders that may be moving material and to review these records whilst the demarcated area notices are in place and as soon as these notices are revoked.

Sign-off for Post Implementation Review: Senior Economist and Minister

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

**Further information sheet**

Please provide additional evidence in subsequent sheets, as required.

**4. What were the original assumptions?**

In the short-term placing movement restrictions on susceptible material within outbreak areas was expected to only impact on local landowners/businesses. Any impact of movement restrictions (that would be likely to affect short term sales and profits) was considered to be relatively low and outweighed by the important value that is protected in the longer-term.

There was uncertainty about the impact of sweet chestnut blight on oak and what the impact would be in the UK context, but emerging evidence from Europe showed the disease can impact oak so this was restricted alongside sweet chestnut material as a precaution.

**5. Were there any unintended consequences?**

No unintended consequences were identified as part of this review. When an issue arose around trade impact to a particular business in the impacted area, the Plant Health and Seeds Inspectorate worked closely with the stakeholder to resolve this issue finding an alternative mechanism to continue trade.

**6. Has the evidence identified any opportunities for reducing the burden on business?**

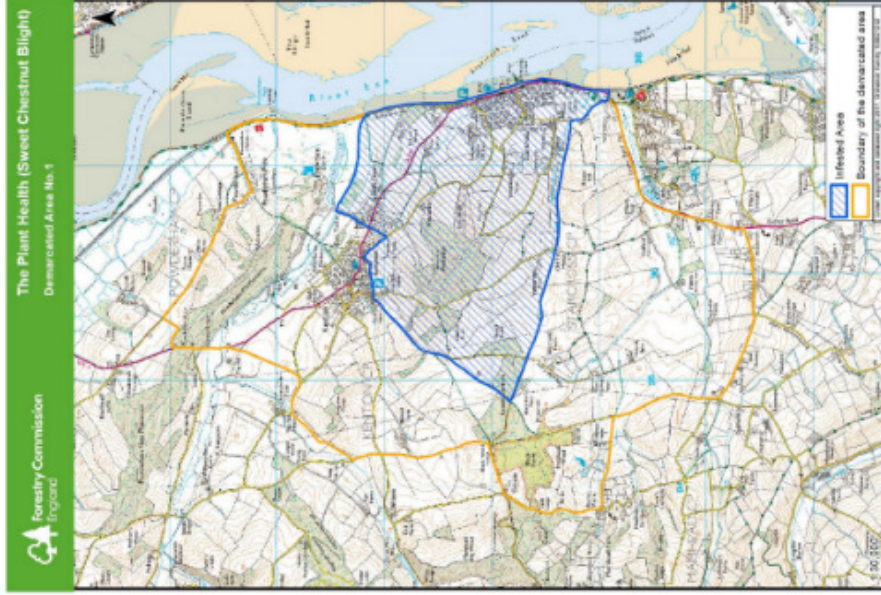
The implementation of the powers under the Order impacted relatively small areas of England and no burden to business was identified. From existing records of movement of material within the demarcated areas, no movement applications that would contravene the restrictions were made.

**7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?**

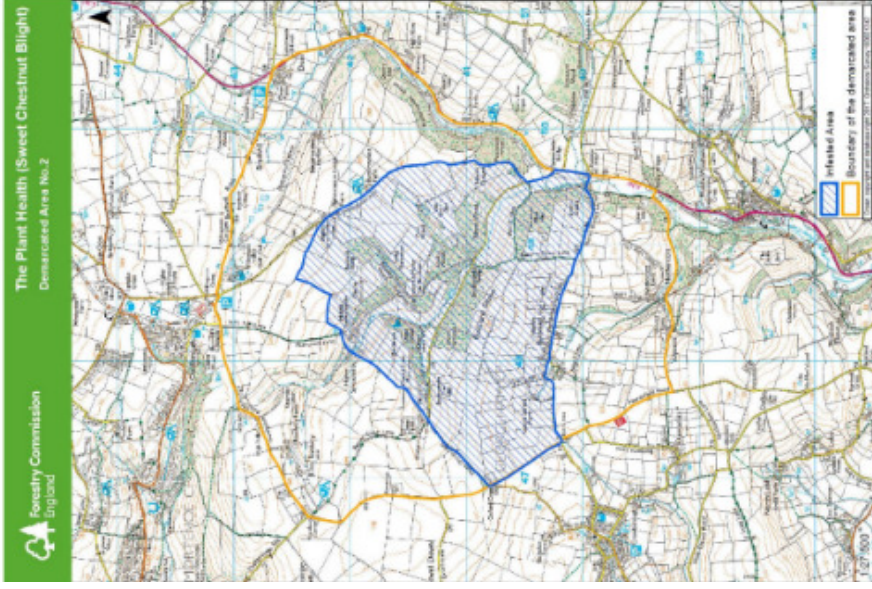
Article 18 of Regulation (EU) 2016/2031 provides powers for EU member states to implement demarcated areas within which necessary phytosanitary measures to eradicate Union quarantine pests can be implemented. This regulation now forms part of EU retained law, supported by domestic legislation Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulation 2019 and the extensive powers in the Plant Health Regulation 2016/2031, which supersedes Plant Health Order (Sweet Chestnut Blight) (England) 2017. Therefore, the GB approach to implementation of demarcated areas matches that of the EU.

## **Annex B: Maps of demarcated areas implemented through the Regulation**

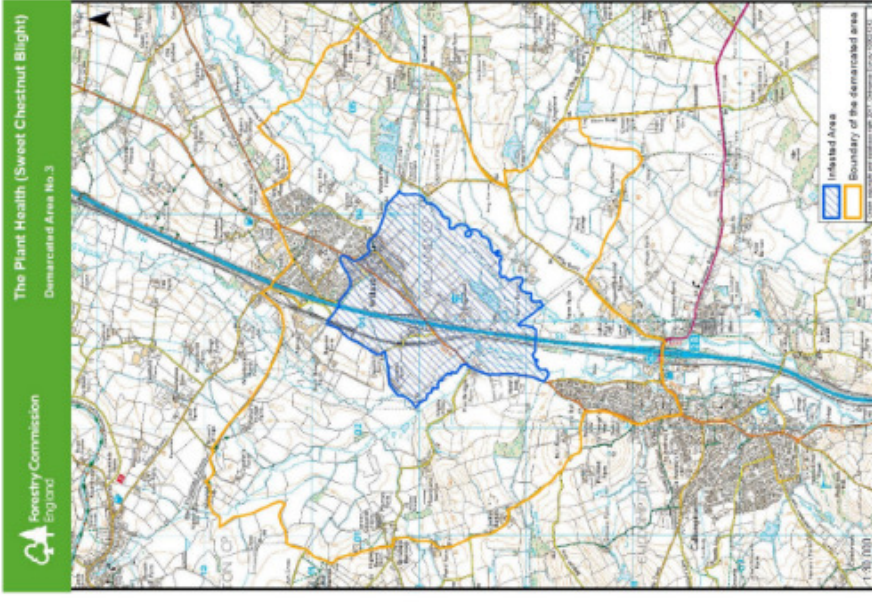
Demarcated area notice 1: Devon



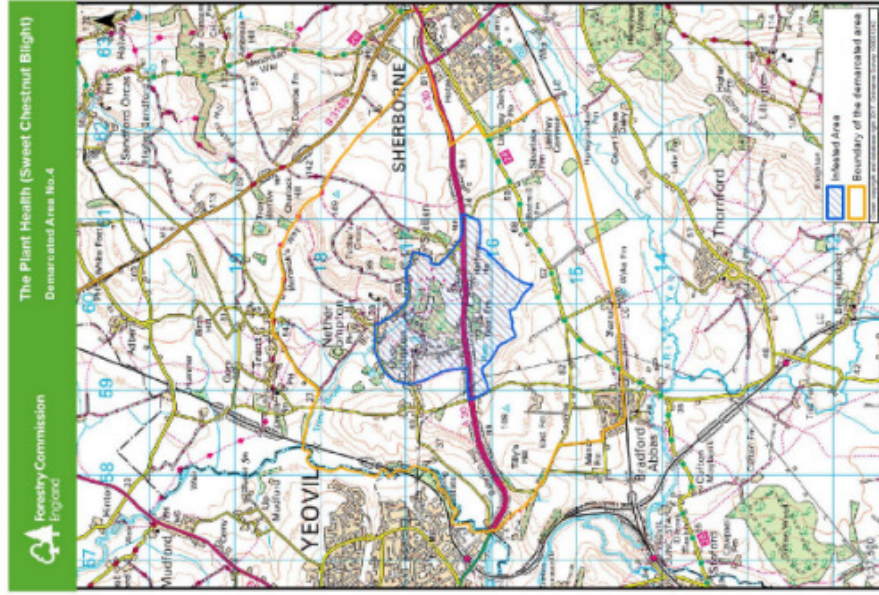
Demarcated area notice 2: Devon



Demarcated area notice 3: Devon



Demarcated area notice 4: Dorset



Demarcated area notice 5: Devon



Demarcated area notice 6: Devon

