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STATUTORY INSTRUMENTS

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**1974 No. 768**

**PLANT HEALTH**

**The Watermark Disease (Local Authorities) Order 1974**

<i>Made</i>	- - - -	<i>1st May 1974</i>
<i>Laid before Parliament</i>		<i>9th May 1974</i>
<i>Coming into Operation</i>		<i>1st May 1974</i>

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 as amended by section 92(2) of, and Part II of Schedule 3 to, the Criminal Justice Act 1967 and by section 4(1) of, and paragraph 8(1) and (3) of Schedule 4 to, the European Communities Act 1972, and as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972, and 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 Watermark Disease (local Authorities) Order 1974, shall come into operation on 1st 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;

“premises” includes land;

“the disease” means the disease in willows caused by the bacterium *Erwinia salicis* (Day) Chester, and commonly known as “watermark disease”;

“willows” means willow trees or shrubs, or stools or setts of willow trees or shrubs, together with any coppice growth arising therefrom, and, except where the context otherwise requires, including willows (or any part thereof) which have been felled.

(2) The Interpretation Act 1889 applies 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 Schedule 1 to this Order.

## **Powers of appointed officer**

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 at all reasonable times enter upon any premises in the area of the Council by which he was appointed for any purpose connection with the execution of this Order, and in particular may examine, by cutting into the wood or otherwise, any willows on the premises and may mark any such willow as appears to him to be affected with the disease, and may cut off or death and take away any part of any willow.

## **Prevention of spread of infection**

5.—(1) A Council, on being satisfied by a report from an appointed officer that the disease is present in any willows, or is present or has at any time during the previous three years been present in any sett-bed of willows, on any premises in their area, may serve upon the occupier of any premises to which the report relates, or upon any person in whose control or management the willows or sett-bed 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 the ground level any willows specified in the notice;
- (b) to remove and destroy by fire at the premises all the branches and twigs of any such willows;
- (c) to remove and destroy by fire at the premises the bark from the trunks of any such willows;
- (d) to destroy by fire at the premises the trunks of any such willows;
- (e) to grub up and destroy by fire at the premises any such willows;
- (f) to ensure that during a period prescribed in the notice but not exceeding three years no willows growing in the sett-bed shall be delivered to any other person or used for propagation, planting or for any other purpose.

and to take such other steps as may be presented in the notice.

(2) A notice served pursuant to paragraph (1) of this Article may at any time be amended, modified 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) of this Article from completely destroying by fire at the premises any willows 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 willows.

(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, being requirements referred to in subparagraph (a), (b), (c), (d), or (e) of paragraph (1) of this Article, within the time or items specified in such notice, then without prejudice to any proceedings under this Order consequent upon such failure, an appointed officer or a person acting under his instructions may enter on the premises and carry out such requirements, and the cost of carrying out such requirements shall be recoverable by the Council as a civil debt from the person on whom the notice was served.

### **Reports to Forestry Commissioners**

6. A Council shall furnish to the Forestry Commissioners a report of any action taken by them under this Order and a copy of any notice served under paragraph (1) or (2) of Article 5 of this Order.

### **Service of notices**

7. 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.

### **Offences**

8. Any person who—

- (i) fails to comply with any notice served under paragraph (1) or (2) of Article 5 of this Order, or
- (ii) fails to give an appointed officer 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 under 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.

### **Enforcement of Order**

9. This Order shall be enforced by a Council in respect of their area.

### **Revocation**

10. The Orders listed in Schedule 2 to this Order are hereby revoked.

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

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## SCHEDULE 1

Article 3

## LOCAL AUTHORITIES TO WHICH THIS ORDER APPLIES

<i>Non-metropolitan County Councils</i>	<i>London Borough Councils</i>
Bedfordshire	Barking
Cambridgeshire	Enfield
Essex	Havering
Hertfordshire	Newham
Norfolk	Redbridge
Suffolk	

## SCHEDULE 2

Article 9

## ORDERS REVOKED BY THIS ORDER

<i>ORDERS REVOKED</i>	<i>REFERENCE</i>
The Watermark Disease (Essex) Order 1953	S.I. 1953/437
The Watermark Disease (Middlesex) Order 1953	S.I. 1953/1083
The Watermark Disease (Suffolk) Order 1953	S.I. 1953/1085
The Watermark Disease (Cambridgeshire) Order 1958	S.I. 1958/1235
The Watermark Disease (Norfolk) Order 1959	S.I. 1959/40
The Watermark Disease (Bedfordshire) Order 1962	S.I. 1962/2562
The Watermark Disease (Essex) Order 1966	S.I. 1966/1483
The Watermark Disease (Hertfordshire) Order 1967	S.I. 1967/77

**EXPLANATORY NOTE**

This Order, which revokes and supersedes eight existing watermark disease orders of local application, gives powers to the local authorities specified in the Schedule to the Order to take steps in connection with the disease of willows known as watermark disease.

An officer appointed by such a local authority may enter any premises within that authority's area, and examine willow trees for the presence of watermark disease.

If there are infected willows 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 willows and the taking of steps to prevent the spread of the disease. If such a notice is not complied with the

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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.