

1984 No. 687

PLANT HEALTH

The Dutch Elm Disease (Local Authorities) Order 1984

<i>Made</i>	- - - -	8th May 1984
<i>Laid before Parliament</i>		22nd May 1984
<i>Coming into Operation</i>		11th June 1984

The Forestry Commissioners, in exercise of the powers conferred on them by sections 3(1), (2) and (4) and 5(1) of the Plant Health Act 1967(a), as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972(b), and of all other powers enabling them in that behalf, hereby make the following Order:—

Citation and commencement

1. This Order may be cited as the Dutch Elm Disease (Local Authorities) Order 1984 and shall come into operation on 11th June 1984.

Interpretation

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

“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;

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

“elms” means trees of the genus *Ulmus* and, except where the context otherwise requires, includes elms which have been felled and parts of elms;

“the Order of 1984” means the Dutch Elm Disease (Restriction on Movement of Elms) Order 1984(c);

“premises” includes land.

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

(a) 1967 c.8; section 3(1) and (2) was amended by the European Communities Act 1972 (c.68), Schedule 4, paragraph 8; section 3(4) was last amended by the Criminal Justice Act 1982 (c.48), section 42.

(b) 1972 c.62.

(c) S.I. 1984/686.

Application

3. The local authorities to which this Order applies are the local authorities specified in column 1 of the Schedule.

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 those parts of their area specified in column 2 of the Schedule, 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 before entering upon any land for the purpose of carrying out any work mentioned in those paragraphs, an appointed officer who has reasonable grounds for suspecting that diseased elm may be present, upon production if so required of a duly authenticated document showing his authority, may at all reasonable times enter upon any land in those parts of the area of the Council specified in column 2 of the Schedule 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 1984) 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 within those parts of their area specified in column 2 of the Schedule, 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 reasonable time or during such reasonable 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 the 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 1984, 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 to the occupier of premises on 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 1984) 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) 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.— (1) For the purposes of this Order, a notice shall be deemed to be duly served on or 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.

(2) Any notice may—

- (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body at the address of the registered or principal office of that body;
- (b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business or, in Scotland, the firm at the principal office of the partnership.

(3) If the name or address of the occupier of any premises on or to whom a notice is required or authorised by this Order to be served or given cannot after reasonable inquiry be ascertained, the notice may be served or given by addressing it to the person on or to whom it is to be served or given by the description of “occupier” of the premises (describing them) to which, or to any elm on which, the notice relates and by leaving it in the hands of a person who is, or appears to be, resident or employed on the premises or by affixing it or a copy of it to some building on, or to some conspicuous part of, or to some object on, the premises.

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.— (1) Any person who—

- (a) fails to comply with any requirement of a notice served under article 5(1) or of such a notice as amended by a further notice under article 5(2); or
- (b) 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

- (c) 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 fine not exceeding £1,000.

(2) Sub-paragraph (a) of paragraph (1) of this article shall not have effect in relation to failure by any person to comply with any requirement of a notice mentioned in that sub-paragraph where the notice was served in accordance with article 7(3).

Enforcement of Order

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

Revocations

11. The Dutch Elm Disease (Local Authorities) Order 1977^(a) and the Dutch Elm Disease (Local Authorities) (Amendment) Order 1979^(b) are hereby revoked.

In Witness whereof the Official Seal of the Forestry Commissioners is hereunto affixed on 8th May 1984.

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

^(a) S.I. 1977/1074.
^(b) S.I. 1979/638.

SCHEDULE

Articles 3, 4(1) and (2)
and 5(1)LOCAL AUTHORITIES WITH POWERS UNDER THIS ORDER AND
THE AREAS WITHIN WHICH THOSE POWERS MAY BE EXERCISED

Column 1	Column 2
Local Government areas the Councils of which have powers under this Order	Those parts of the Local Government areas within which the powers may be exercised
<i>Counties</i>	
Cheshire	That part of the county which comprises the districts of Halton, Macclesfield and Warrington, the parishes of Congleton, Goostrey, Hulme Walfield, Moreton cum Alcumlow, Newbold Astbury, Somerford, Somerford Booths, Swettenham, Twemlow, those parts of the parishes of Frodsham, Helsby and Sutton which lie west of the eastern boundary of the road from Chester to Warrington (A56), those parts of the parishes of Allostock, Arclid, Brereton, Church Lawton, Cranage, Holmes Chapel, Odd Rode and Smallwood which lie east of the western boundary of the road from Kidsgrove to Knutsford (A50) and that part of the parish of Alsager which lies east of the western boundary of the road from Alsager to Newcastle-under-Lyme (A5011).
Clwyd	That part of the county which comprises the district of Colwyn.
Cumbria	That part of the county which comprises the districts of Allerdale, Barrow-in-Furness and Copeland, and those parts of the district of South Lakeland which comprise the parishes of Aldingham, Angerton, Blawith and Subberthwaite, Broughton West, Coniston, Dunnerdale-with-Seathwaite, Egton-with-Newland, Kirkby Ireleth, Lowick, Mansriggs and Osmotherley, Pennington, Torver, Ulverston and Urswick.
Derbyshire	That part of the county which comprises the district of High Peak.
East Sussex	That part of the county which comprises the districts of Brighton, Eastbourne and Hove, those parts of the parishes of Chailey and Newick which lie south of the southern boundary of the road from Haywards Heath to Maresfield (A272), the parishes of Alciston, Alfriston, Arlington, Barcombe, Beddingham, Berwick, Chalvington, Chiddingfold, Ditchling, East Chiltington, East Dean, Falmer, Firle, Folkington, Friston, Glynde, Hailsham, Hamsey, Hellingly, Iford, Isfield, Jevington, Kingston near Lewes, Laughton, Lewes, Litlington, Little Horsted, Lullington, Newhaven, Peacehaven, Pevensey, Piddinghoe, Plumpton, Polegate, Ringmer, Ripe, Rodmell, Selmeston, South Heighton, South Malling (Without), Southease, St Ann (Without), St John (Without), Streat, Tarring Neville, Telscombe, Westdean, Westham, Westmeston, Willingdon, Wilmington, Wivelsfield, the part of the parish of Framfield which lies to the south-west of the south-western boundary of the A22, and that part of the district of Lewes which lies east of the parish of Newhaven, south of the parish of South Heighton and south-west of the district of Wealden.

Column 1	Column 2
Local Government areas the Councils of which have powers under this Order	Those parts of the Local Government areas within which the powers may be exercised
Gwynedd	That part of the county which comprises the districts of Aberconwy, Arfon, Dwyfor and Ynys Môn (Isle of Anglesey).
Humberside	The whole county.
Lancashire	That part of the county which comprises the districts of Blackburn, Blackpool, Burnley, Chorley, Fylde, Pendle, Rossendale and West Lancashire.
Lincolnshire	That part of the county which comprises the City of Lincoln.
North Yorkshire	That part of the county which comprises the districts of Craven, Harrogate, Ryedale, Scarborough and Selby, and the City of York.
West Sussex	That part of the county which comprises that part of the district of Adur south of the southern boundary of the district of Horsham and east of the eastern boundaries of the parishes of Coombes and Lancing.
<i>Districts</i>	
Barnsley	The whole district in each case.
Bolton	
Bradford	
Bury	
Calderdale	
Doncaster	
Gateshead	
Kirklees	
Knowsley	
Leeds	
Liverpool	
Manchester	
Newcastle-upon-Tyne	
North Tyneside	
Oldham	
Rochdale	
Rotherham	
Salford	
Sefton	
Sheffield	
South Tyneside	
St Helens	
Stockport	
Sunderland	
Tameside	
Trafford	
Wakefield	
Wigan	
<i>Regions</i>	
Central	The whole region.
Dumfries and Galloway	That part of the region which comprises the districts of Nithsdale, Stewartry and Wigtown.

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Local Government areas the Councils of which have powers under this Order	Those parts of the Local Government areas within which the powers may be exercised
Fife Grampian Highland Lothian Strathclyde Tayside	The whole region in each case.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order revokes and re-enacts with amendments the Dutch Elm Disease (Local Authorities) Order 1977, as amended by the Dutch Elm Disease (Local Authorities) (Amendment) Order 1979. It sets out in column 1 of the Schedule all the local authorities to which it applies, and in column 2 of the Schedule the areas within which those authorities may exercise their powers under the Order to take steps to prevent the spread of Dutch elm disease. Each local authority may enforce the Order within their own area.

The principal change is in respect of the Schedule to the Order. The Councils of certain local authorities to which the 1977 Order applied are omitted from this Order (Borders, Cleveland, Durham, Northumberland and Powys) and the areas within which certain others may exercise their powers are reduced (parts of Cheshire, Clwyd, Cumbria, Derbyshire, Dumfries and Galloway, East Sussex, Gwynedd, Lancashire, Lincolnshire, North Yorkshire and West Sussex).

An officer appointed by a local authority listed in the Schedule to this Order who has reasonable grounds for suspecting that diseased elm may be present 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 (article 4). The Dutch Elm Disease (Restriction on Movement of Elms) Order 1984 prohibits the movement of elm with bark attached into, and along or across highways or by rail or water within, areas listed in the Schedule to that Order, which are the same as those specified in the Schedule to this Order. An exception 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 not listed in the Schedule to that Order into an area which is 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 (article 5). In addition, a person who fails to comply with such a notice, or who wilfully obstructs or who fails to give reasonable facilities to an appointed officer or person acting under his instructions, is guilty of an offence and may be liable on summary conviction to a fine not exceeding £1,000 (an increase in accordance with the provisions of the Criminal Justice Act 1982 from the previous maximum fine of £100 for a first offence and £200 for a subsequent offence) (article 9).

For the purpose of carrying out his functions under the Order an appointed officer may, on entering land, be accompanied by 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, for the purpose of carrying out the work as directed by the appointed officer (article 4(5)).

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