
STATUTORY INSTRUMENTS

2019 No. 40

PLANT HEALTH, ENGLAND

The Plant Health (*Ips typographus*) (England) Order 2019

<i>Made</i>	- - - -	<i>15th January 2019</i>
<i>Laid before Parliament</i>		<i>16th January 2019</i>
		<i>4.00 p.m. on 16th</i>
<i>Coming into force</i>	- -	<i>January 2019</i>

The Forestry Commissioners make this Order in exercise of the powers conferred by section 3(1), (2) and (4) of the Plant Health Act 1967(1).

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Plant Health (*Ips typographus*) (England) Order 2019 and comes into force at 4.00 p.m. on 16th January 2019.

(2) This Order extends to England and Wales but applies in relation to England only.

Interpretation

2.—(1) In this Order—

“the 2005 Order” means the Plant Health (Forestry) Order 2005(2);

“inspector” means any person authorised to be an inspector for the purposes of the 2005 Order;

“premises” includes any land, building, vehicle, vessel, aircraft, hovercraft, freight container or railway wagon;

“susceptible material” means—

(a) any wood of conifers (Coniferales), other than in the form of wood packaging material or dunnage, which—

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- (1) 1967 c. 8; section 3(1) was amended by paragraph 8(2)(a) and (b) of Schedule 4 to the European Communities Act 1972 (c. 68) and S.I. 2011/1043. Section 3(2) was amended by paragraph 8(3) of Schedule 4 to the European Communities Act 1972. Section 3(4) was substituted by section 42 of the Criminal Justice Act 1982 (c. 48) and was amended by Part 14 of Schedule 1 to the Statute Law (Repeals) Act 1993 (c. 50). By virtue of section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), an order under section 3 of the Plant Health Act 1967 (“the 1967 Act”) may provide for offences under that section to be punishable by a fine of any amount. The powers conferred by section 3 of the 1967 Act are conferred on a “competent authority”, which is defined in section 1(2) of that Act. Section 1(2)(a)(i) of the 1967 Act provides that the Forestry Commissioners are the competent authority for England as regards the protection of forest trees and timber from attack by pests.
- (2) S.I. 2005/2517, as amended by S.I. 2013/755 (W. 90); there are other amending instruments but none is relevant.

- (i) retains all or part of its bark; or
 - (ii) is in the form of chips, waste wood, logs, billets, twigs, faggots or is in other similar forms;
 - (b) any isolated bark of conifers (Coniferales);
 - (c) any trees of the genus *Abies* Mill., *Larix* Mill., *Picea* A. Dietr., *Pinus* L. or *Pseudotsuga* Carr. over three metres in height, including felled or fallen trees, other than fruit, seeds, leaves or foliage.
- (2) In paragraph (1), “dunnage”, “isolated bark”, “tree” and “wood packaging material” have the same meanings as in the 2005 Order.

Demarcated areas

3.—(1) Where an inspector has confirmed the presence of *Ips typographus* on any premises, the Commissioners may, by notice, demarcate an area in relation to the infestation.

(2) An area demarcated under paragraph (1) must be of such size as the Commissioners consider appropriate to reduce the risk of spread of *Ips typographus*, taking into account—

- (a) scientific and technical evidence and principles;
- (b) the biology of *Ips typographus*;
- (c) the presence of susceptible material;
- (d) other appropriate information concerning the presence or possible presence of *Ips typographus*.

(3) A notice under paragraph (1)—

- (a) must be in writing;
- (b) must describe the extent of—
 - (i) the demarcated area; and
 - (ii) where the prohibitions in article 4(2)(a) are to apply, the parts of the demarcated area which are to be treated as the infested area and the controlled area;
- (c) must specify the categories of susceptible material to which—
 - (i) any prohibitions in article 4(2)(a) are to apply; or
 - (ii) any prohibition in article 4(2)(b) is to apply;
- (d) must state the date on which any prohibition in article 4(2) is to commence;
- (e) must be published in such manner as is appropriate to bring it to the attention of the public;
- (f) may be amended or revoked, in whole or in part, by a further notice.

(4) Where the demarcated area contains an infested area and a controlled area—

- (a) any premises which are partly within the infested area are to be treated as being within the infested area; and
- (b) any premises which are partly within the controlled area and not also partly within the infested area are to be treated as being within the controlled area.

(5) In any other case, any premises which are partly within the demarcated area are to be treated as being within the demarcated area.

(6) In this article—

“the Commissioners” means the Forestry Commissioners;

“*Ips typographus*” means *Ips typographus* (Heer) (the larger eight-toothed spruce bark beetle).

Prohibition on the movement of susceptible material

4.—(1) This article applies to the movement of any susceptible material specified in a notice published pursuant to article 3.

- (2) No person may move any relevant susceptible material—
- (a) where the demarcated area specified in the notice contains an infested area and a controlled area—
 - (i) out of or within the infested area specified in the notice, unless authorised in writing by an inspector; and
 - (ii) out of or within the controlled area specified in the notice, unless authorised in writing by an inspector; or
 - (b) in any other case, out of or within the demarcated area specified in the notice, unless authorised in writing by an inspector.
- (3) The prohibitions in paragraph (2)(a) and the prohibition in paragraph (2)(b)—
- (a) apply on and after the date specified in the notice and continue to apply until such date as that notice is revoked or otherwise ceases to have effect; and
 - (b) do not apply to the movement of any relevant susceptible material which—
 - (i) enters and exits—
 - (aa) where the demarcated area contains an infested area and a controlled area, the relevant part without stopping; or
 - (bb) in any other case, the demarcated area without stopping; or
 - (ii) is authorised by an exception to a prohibition or requirement in a notice issued under the 2005 Order before the date on which the prohibitions in paragraph (2)(a) or the prohibition in paragraph (2)(b) have effect.
- (4) In this regulation—
- “relevant part” means—
- (a) in the case of any susceptible material which is only subject to the prohibition in paragraph (2)(a)(i), the infested area;
 - (b) in the case of any susceptible material which is only subject to the prohibition in paragraph (2)(a)(ii), the controlled area;
 - (c) in the case of any susceptible material which is subject to the prohibitions in paragraph (2)(a)(i) and (ii), the demarcated area;
- “relevant susceptible material” means—
- (a) in any case where a demarcated area described in a notice published pursuant to article 3 contains an infested area and a controlled area—
 - (i) any susceptible material of a description specified for the purposes of that infested area in the notice;
 - (ii) any susceptible material of a description specified for the purposes of that controlled area in the notice;
 - (b) in any other case, the susceptible material specified for the purposes of the demarcated area in a notice published pursuant to article 3.

Powers of inspectors

5.—(1) Subject to paragraph (3), where an inspector has reasonable grounds for suspecting that there is present on any premises any susceptible material that is being moved or has been moved

in contravention of a prohibition in article 4(2), the inspector may enter and inspect those premises and, if the inspector considers it necessary, seize any such material found on the premises.

(2) An inspector acting under paragraph (1) must, if requested to do so, show evidence of the inspector's authority to act.

(3) Paragraph (1) does not apply in relation to any premises which are used wholly or mainly as a private dwelling unless—

- (a) notice is given to the occupier at least 24 hours before the proposed entry and inspection of those premises; or
- (b) the inspector has been granted a warrant by a justice of peace.

(4) A justice of peace may, by signed warrant, permit an inspector to enter premises under paragraph (1), if necessary by reasonable force, if the justice, on the basis of sworn information in writing, is satisfied that—

- (a) there are reasonable grounds for the inspector to enter those premises; and
- (b) any of the conditions specified in paragraph (5) are met.

(5) The conditions are that—

- (a) entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant has been given to the occupier;
- (b) asking for admission to the premises, or giving notice of the intention to apply for a warrant, would defeat the object of the entry;
- (c) entry is required urgently;
- (d) the premises are unoccupied or the occupier is temporarily absent or, despite all reasonable efforts by the inspector, it has not been possible to identify the occupier.

(6) A warrant is valid for one month from the date on which it is granted.

(7) An inspector who enters any premises which are unoccupied must leave those premises as effectively secured against unauthorised entry as they were before entry by the inspector.

Offences

6.—(1) A person commits an offence if, without reasonable excuse, proof of which lies with the person, that person—

- (a) contravenes any prohibition in article 4(2); or
- (b) intentionally obstructs an inspector in the exercise of the powers given to the inspector by or under this Order.

(2) If an offence under paragraph (1) is proven to have been committed with the consent or connivance of, or to have been attributable to the neglect on the part of—

- (a) a person who is the director, manager or secretary or other similar officer of a body corporate, or
- (b) a person who was purporting to act in such capacity,

that person, as well as the body corporate, is guilty of the offence and is liable to prosecution.

(3) For the purposes of paragraph (2), “director”, in relation to body corporate whose affairs are managed by its members, includes any member of the body corporate.

(4) A person guilty of an offence under this article is liable, on summary conviction, to a fine.

The official seal of the Forestry Commissioners



15th January 2019

Stephen Bennett
Secretary to the Forestry Commissioners

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order introduces specific measures for the control in England of infestations of *Ips typographus* (Heer) (the larger eight-toothed spruce bark beetle) which is a serious pest of conifer trees.

Article 3 makes provision for the Forestry Commissioners to demarcate an area of England (which may further be divided into an infested area and a controlled area) and to specify the susceptible material (see article 2(1)) to which the prohibitions on movement in article 4 are to apply in response to a confirmed finding of *Ips typographus*.

Article 4 prohibits, subject to certain exceptions, the movement of susceptible material within or out of a demarcated area, or an infested or controlled area, as described in a notice published under the Order, without the written authority of a plant health inspector.

Article 5 contains provisions relating to inspection and enforcement.

Article 6 makes it an offence to contravene a prohibition on the movement of susceptible material contained in Article 4(2). A person guilty of an offence under article 6 is liable on summary conviction to a fine.

An impact assessment has not been prepared for this instrument as no or no significant, impact on the private, voluntary or public sector is foreseen.