

**2004 No. 3367**

**PLANT HEALTH**

**The Plant Health (*Phytophthora kernovii* Management Zone)  
(England) Order 2004**

<i>Made</i> - - - -	<i>20th December 2004</i>
<i>Laid before Parliament</i>	<i>20th December 2004</i>
<i>Coming into force</i> - -	<i>21st December 2004</i>

The Secretary of State, in exercise of the powers in sections 3(1), (2) and (4) and 4(1) of the Plant Health Act 1967(a), and now vested in her(b), and the Forestry Commissioners, in exercise of the powers conferred on them by those sections, hereby make the following Order:

**Title, commencement, extent and application**

1.—(1) This Order may be cited as the Plant Health (*Phytophthora kernovii* Management Zone) (England) Order 2004 and shall come into force on 21st December 2004.

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

**Interpretation**

2. In this Order—

“footpath” includes a footpath and a bridleway with the meaning given to those terms in the Highways Act 1980(c);

“inspector” means any person authorised to be an inspector for the purposes of the principal Orders;

“management zone” means the area near Redruth in Cornwall enclosed by the boundary described in Schedule 2;

“*Phytophthora kernovii*” refers to the organism known as *Phytophthora kernovii* (formerly known as *Phytophthora* taxon C);

“plant” has the same meaning as in the Plant Health (Great Britain) Order 1993(d);

“premises” has the same meaning as in the principal Orders;

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(a) 1967 c. 8; section 3(1) and (2) were amended by the European Communities Act 1972 (c. 68), section 4(1) and Schedule 4, paragraph 8; section 3(4) was substituted by section 42 of the Criminal Justice Act 1982 (c. 48) and further amended by section 17(1) of the Criminal Justice Act 1991 (c. 53). Section 1(2) of the Plant Health Act 1967 defines “competent authorities” for the purposes of the Act.

(b) Under article 2(1) and (2) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794) the functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967 as regards England were transferred to the Secretary of State.

(c) 1980 c. 66.

(d) S.I. 1993/1320; amended by S.I. 1998/2245. There are other amending instruments but none is relevant.

“the principal Orders” means the Plant Health (Great Britain) Order 1993 and the Plant Health (Forestry) (Great Britain) Order 1993(a);

“susceptible material” means plants and trees, other than fruit or seeds, of the genera and species listed in Schedule 1; and

“tree” has the same meaning as in the Plant Health (Forestry) (Great Britain) Order 1993.

### **Prohibition on the movement of susceptible material**

3. No person shall move any susceptible material from any place within the management zone to any place outside the management zone without the written authority of an inspector.

### **Closure of footpaths**

4.—(1) Subject to paragraph (3), an inspector may, where he thinks it expedient for preventing the spread of *Phytophthora kernovii* from plants or trees adjoining or within the vicinity of a footpath or any part of a footpath within the management zone, close that footpath or part of a footpath in accordance with paragraph (2).

(2) An inspector shall close a footpath or part of a footpath under paragraph (1) by displaying such notices at points of entry to the footpath as appear to the inspector to be reasonably necessary to notify persons wishing to use the footpath of its closure.

(3) Closure of a footpath under paragraph (1) shall not prevent an occupier of premises, or any person who is treated as his visitor for the purposes of the Occupiers’ Liability Act 1957(b), from using the footpath for the purpose of gaining access to those premises, or to any part of those premises, where his or their only means of access to the premises is by virtue of the footpath.

(4) An inspector may revoke a closure of a footpath or any part of a footpath under paragraph (1) by removing or causing to be removed all notices displayed in accordance with paragraph (2).

(5) Where an inspector closes a footpath under paragraph (1) or revokes a closure of a footpath under paragraph (4) he shall—

- (a) give notice of such closure or revocation to the highway authority for the footpath; and
- (b) publish notice of such closure or revocation in a local newspaper circulating in the area in which the footpath is situated.

### **Powers of inspectors**

5.—(1) Subject to paragraphs (2), (3) and (4), an inspector may, if he has reasonable grounds for suspecting that there is present on any premises, whether inside or outside the management zone, any susceptible material that is being or has been moved in contravention of article 3, enter those premises and inspect and, if he considers it necessary, seize any such material found on the premises.

(2) Before exercising the power in paragraph (1) an inspector shall, unless it is not practicable to do so, give the occupier or other person in charge of the premises reasonable notice of his intention and shall produce his authority, if so required.

(3) The power to enter premises conferred by paragraph (1) may be exercised by an inspector to enter a building used wholly or mainly as a dwelling only if he has been granted a warrant by a justice of the peace.

(4) A justice of the peace may grant a warrant under paragraph (3) only if he is satisfied—

- (a) that admission to the building has been refused, or is likely to be refused, or that the case is one of urgency, or that a request for admission might prejudice the purpose of the entry; and
- (b) that there are reasonable grounds for entry.

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(a) S.I. 1993/1283, amended by S.I. 1998/2206. There are other amending instruments but none is relevant.  
(b) 1957 c. 31.

- (5) A warrant granted under paragraph (3) shall remain in force—
- (a) for one month; or
  - (b) until the purpose for which the warrant is granted has been fulfilled,
- whichever period is the shorter.

### **Offences**

- 6.—(1) A person shall be guilty of an offence if—
- (a) without reasonable excuse, proof of which shall lie on him—
    - (i) he moves susceptible material in contravention of article 3;
    - (ii) he uses a footpath that has been closed under article 4(1) unless that use is in accordance with article 4(3); or
    - (iii) he removes, unless directed by an inspector to do so, or defaces or otherwise interferes with a notice displayed under article 4(2); or
  - (b) he intentionally obstructs an inspector in the exercise of the powers conferred upon him by this Order.
- (2) A person guilty of an offence under this article shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

20th December 2004

*Ben Bradshaw*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

20th December 2004

*Wilma Harper*  
Secretary to the Forestry Commissioners

## SCHEDULE 1

Article 2

### Susceptible Material

<i>Scientific name</i>	<i>Common name</i>
<i>Fagus sylvatica</i> L.	beech
<i>Gevuina avellana</i> Molina	Chilean hazel nut
<i>Liriodendron tulipifera</i> L.	tulip tree
<i>Magnolia</i> L.	magnolia
<i>Michelia</i> L.	-
<i>Pieris formosa</i> (Wall.) D.Don	-
<i>Quercus</i> L.	oak
<i>Rhododendron</i> L.	rhododendron

## SCHEDULE 2

Article 2

### Management Zone

Starting at Pulla Cross SW 754 398 the boundary follows the road north, over the crossroads at SW 748 408, turning north west at SW 748 413 and continues to follow the road until SW 738 424.

The boundary continues to follow the road north through Little Beside to the junction at SW 737 431 and continues in a north easterly direction until the crossroads at SW 738 433.

At the crossroads the boundary follows the road to the left in a northerly direction until the crossroads at SW 737 444.

The boundary then follows the B3298 in a westerly direction until SW 735 444 where it turns to follow the road in a north westerly direction until it meets the A30.

The boundary follows the A30 in a south westerly direction until it meets the footpath at SW 715 439.

The footpath is followed due south until it meets the road, Treskerby, at SW 716 434. The road is followed in a westerly direction until it turns due south along College Lane until the footpath at SW 713 431.

This footpath is followed in a southerly direction until it meets a road at SW 718 423. The road is then followed due east until SW 720 422 at Ninnis.

The boundary then follows the road in a south westerly direction until it reaches the road junction at SW 717 418 and then follows the road in a south easterly direction until it reaches Pennance Road at SW 726 409.

The boundary crosses Pennance Road and follows the road, passing through Trevarth until it reaches the A393 at SW 730 398.

The A393 is followed in an easterly direction until SW 730 398 when it follows the road due south until SW 736 378.

The boundary then follows the road due east until it reaches the junction at SW 746 382 where it follows the road in a north easterly direction until it reaches the A393 at SW 755 385.

The boundary crosses the A393 following Tresamble Hill in a northerly direction until it reaches Pulla Cross.

Note: Where roads and footpaths form part of the boundary of the management zone they fall within the management zone.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, which extends to England and Wales but applies to England only, comes into force on 21st December 2004.

The Order gives plant health inspectors additional powers to those conferred on them by the Plant Health (Great Britain) Order 1993 (S.I. 1993/1320) and by the Plant Health (Forestry) (Great Britain) Order (S.I. 1993/1283) for the purpose of containing within and eradicating from an area within Cornwall (the “management zone”, as defined in article 2 and Schedule 2) the organism currently known as *Phytophthora kernovii*, a plant pest which is not normally present in Great Britain.

The movement of susceptible material (defined in article 2 and Schedule 1) from within the zone to outside the zone is prohibited without the written authority of an inspector (article 3).

Inspectors may, for the purpose of preventing the spread of *Phytophthora kernovii*, close footpaths within the zone (article 4).

Inspectors are provided with a power to enter premises for the purpose of inspecting and seizing any susceptible material that they have reasonable grounds for suspecting is being or has been moved in contravention of article 3. An inspector may only exercise the power to enter into a building used wholly or mainly as a dwelling if he has been granted a warrant by a justice of the peace (article 5).

A person who, without reasonable excuse, moves susceptible material in contravention of article 3, uses a footpath that has been closed under article 4, removes or otherwise interferes with a notice of closure displayed under article 4 or obstructs an inspector in the exercise of his powers under the Order commits an offence (article 6). The offences carry liability on summary conviction to a fine not exceeding level 5 on the standard scale (£5,000).

Copies of plans showing the extent of the management zone have been placed in the libraries of both Houses of Parliament.

No regulatory impact assessment has been prepared.



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The Plant Health (*Phytophthora kernovii* Management Zone)  
(England) Order 2004

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