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STATUTORY INSTRUMENTS

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**2005 No. 2517**

**The Plant Health (Forestry) Order 2005**

**PART 2**

**IMPORTS FROM THIRD COUNTRIES**

**Interpretation of Part 2**

**3. In this Part—**

“approved place of inspection” means a place of destination of relevant material approved by the Commissioners under article 17;

“Customs Code” means Council Regulation (EEC) No 2913/92(1) establishing the Community Customs Code;

“customs document” means a document required by the Commissioners for Her Majesty’s Revenue and Customs for placing relevant material under one of the procedures specified in Article 4(16)(a) and (d) to (g) of the Customs Code;

“electronic communications” has the same meaning as in the Electronic Communications Act 2000(2);

“identity check” means an examination of a consignment of relevant material for the purposes of determining whether it corresponds to its description in the documents that accompany it being an examination of that consignment—

- (a) in its entirety; or
- (b) on the basis of one or more representative samples from the consignment or from each lot forming part of the consignment;

“industry certificate” means a certificate authorised by a decision referred to in article 7(7) and which complies with the requirements of article 15(3);

“working day”, in relation to the notice requirements in articles 6(3)(b)(ii) and 16(3) and the period for which material may be detained under article 14(1), means a period of twenty-four hours which is not a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971(3) in the part of Great Britain where the notice is given or the material is detained; and

“working hour” means a period of one hour during a working day.

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(1) OJNo. L 302, 19.10.1992, p.1.

(2) 2000 c. 7; the definition of electronic communication in section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.

(3) 1971 c. 80.

## **Application of Part 2**

4.—(1) Subject to paragraph (2), the provisions of this Part shall apply to tree pests and relevant material which are introduced into Great Britain from a third country either directly or via another part of the European Community.

(2) The provisions of this Part shall only apply to EC transit goods in respect of which the Commissioners have agreed with the official body of point of entry for those goods, in accordance with article 12(6), to be responsible for certain matters.

## **Prohibitions and restrictions on landing tree pests and relevant material**

5.—(1) The landing in Great Britain of the following tree pests and relevant material is prohibited—

- (a) any tree pest of a description specified in Schedule 1;
- (b) any relevant material of a description specified in column 2 of Schedule 2 carrying or infected with a tree pest of a description specified in column 3 of that Schedule opposite the reference to that relevant material;
- (c) any tree pest which, although not specified in Schedule 1 or in column 3 of Schedule 2, is not normally present in Great Britain and which is likely to be injurious to trees in Great Britain;
- (d) subject to paragraph (2), any relevant material of a description specified in column 2 of Schedule 3 which originates in a third country specified in column 3 opposite the reference to that relevant material;
- (e) subject to article 8, any relevant material not prohibited under sub-paragraph (d) which is of a description specified in column 2 of Part A of Schedule 4, unless the requirements specified in column 3 of that Part opposite the reference to that relevant material have been complied with; and
- (f) subject to article 8 and without prejudice to any requirements specified in column 3 of Part A of Schedule 4 relating to the relevant material, any relevant material which is of a description specified in column 2 of Part C of Schedule 4 and which is not prohibited under sub-paragraph (d), unless the requirements specified in column 3 of Part C of Schedule 4 opposite the reference to that relevant material have been complied with.

(2) The prohibition in paragraph (1)(d) shall not apply to any relevant material which is in the course of its consignment between two third countries under appropriate customs procedures and without any change in customs status and which is transported in such a way as to prevent the accidental escape of tree pests.

## **Advance notification of landing**

6.—(1) Subject to article 29(3), the landing in Great Britain by any person of relevant material to which paragraph (2) refers, is prohibited unless he gives notice in accordance with this article.

(2) The prohibition on landing relevant material in paragraph (1) applies to the landing in Great Britain, where Great Britain is the point of entry of the material into the Community, of the following relevant material—

- (a) any relevant material specified in Part A of Schedule 5; or
- (b) any relevant material specified in Part B of Schedule 5 and which is—
  - (i) listed in column 1 of Part C of Schedule 4;

- (ii) listed in the second column of Annex II Part B of the Directive and in the course of its consignment to a protected zone listed in the fourth column opposite the reference to that relevant material; or
  - (iii) listed in the first column of Annex IV Part B of the Directive and in the course of its consignment to a protected zone listed in the third column opposite the reference to the relevant material.
- (3) A notice under paragraph (1) shall—
- (a) be in accordance with the requirements of Schedule 12;
  - (b) subject to paragraph (5), be given in time to arrive at the office of the Commissioners—
    - (i) in the case of any relevant material brought by air; at least four working hours, and
    - (ii) in any other case; at least three working days,before the relevant material is landed.
- (4) The address to which a notice shall be given under paragraph (1) shall be such address as the Commissioners shall specify from time to time, which may include an address for electronic communications.
- (5) Where a person who is required by paragraph (1) to give notice of the landing of any relevant material can reasonably show that he was unable to comply with the periods specified in paragraph (3)(b)(i) or (ii) because he was unaware that the material had been consigned, he shall give notice as soon as is reasonably practicable.

### **Requirements for certificates**

7.—(1) Subject to articles 8 and 29(2) and to paragraphs (6) and (7), the landing in Great Britain of any relevant material referred to in sub-paragraph (a) or (b) of article 6(2) is prohibited unless that relevant material is accompanied by a phytosanitary certificate issued in the country in which that material originates or in the country from which it was consigned and, where paragraph (2) applies, by a phytosanitary certificate for re-export.

(2) Where relevant material consigned to Great Britain via any third country by way of transit has been split up, combined with other consignments or repackaged, that material shall be accompanied by a phytosanitary certificate for re-export issued in the country of transit.

(3) Where relevant material consigned to Great Britain via any third country by way of transit has or may have been exposed to infection or contamination by any tree pest, no longer remains the same material specified in the phytosanitary certificate which accompanies it or has been processed so as to change its nature, the phytosanitary certificate required to accompany it shall be issued in the country of transit.

(4) Where relevant material is listed in the first column of Annex IV Part B of the Directive and the requirement or requirements specified in the second column opposite the reference to that relevant material can only be fulfilled in the country in which the relevant material originates, the phytosanitary certificate required to accompany it shall be issued in that country.

(5) Where a phytosanitary certificate is required by paragraph (2) to be accompanied by a phytosanitary certificate for re-export, it may consist of a copy of the certificate certified as a true copy of the original by an authorised officer but in all other cases shall be the original certificate.

(6) Provided the relevant material is transported in such a way as to prevent the accidental escape of tree pests and does not undergo any change in its customs status, paragraph (1) does not apply to—

- (a) relevant material landed in Great Britain which, under appropriate customs procedures, is in the course of its consignment between two third countries; or

(b) relevant material landed in Great Britain which has been consigned to Great Britain from another part of the European Community via a third country.

(7) Relevant material may be accompanied by an industry certificate instead of a phytosanitary certificate where authorised by Commission Decisions—

- (a) 93/359/EEC(4);
- (b) 93/360/EEC(5);
- (c) 93/365/EEC(6);
- (d) 93/422/EEC(7);
- (e) 93/423/EEC(8); or
- (f) 2004/95/EC(9).

### **Exceptions from certain prohibitions and requirements**

8.—(1) The prohibitions on landing relevant material in article 5(1)(e) and (f), the requirement for advance notification in article 6(1) and the requirements of article 7 for relevant material to be accompanied by a phytosanitary certificate, phytosanitary certificate for re-export or an industry certificate shall not apply to any trees or wood referred to in paragraph (2), not showing any signs of the presence of any tree pest, landed in Great Britain in the baggage of a passenger or other traveller and which—

- (a) are not intended for use in the course of a trade of business;
- (b) are intended for household use; and
- (c) have been grown in and consigned to Great Britain from the Euro-Mediterranean area.

(2) The trees or wood referred to in paragraph (1) are those which are in one of the following categories, not exceeding the stated quantities—

- (a) parts of trees, including dried cones, leaves and branches, for decoration or which together form a single wreath;
- (b) one cut coniferous tree less than 3 metres in height;
- (c) seeds of *Castanea* (chestnuts), intended for human consumption, not exceeding 2 kilogrammes in weight;
- (d) tree seedlings, except in bonsai form, not exceeding 5 in number; or
- (e) pieces of wood, which are bark-free, not exceeding 1 metre in length and not exceeding 5 in number.

### **Presentation and display of documents**

9.—(1) Except in the case of consignments referred to in paragraph (3), any phytosanitary certificate, phytosanitary certificate for re-export or industry certificate required under article 7 to accompany relevant material shall be delivered by the importer of that relevant material, within three days of its landing, to an inspector.

(2) Subject to article 29(4), importers shall include in a customs document relating to each consignment of relevant material referred to in sub-paragraph (a) or (b) of article 6(2)—

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(4) OJ No. L 148, 19.6.1993, p.41.  
 (5) OJ No. L 148, 19.6.1993, p.45.  
 (6) OJ No. L 151, 23.6.1993, p.38.  
 (7) OJ No. L 195, 4.8.1993, p.51.  
 (8) OJ No. L 195, 4.8.1993, p.55.  
 (9) OJ No. L 28, 31.1.2004, p.22.

- (a) a statement that “this consignment contains produce of phytosanitary relevance”;
- (b) the reference number of any phytosanitary certificate, phytosanitary certificate for re-export or industry certificate required by article 7 to accompany the relevant material; and
- (c) the registration number of the importer of the relevant material.

(3) In the case of a consignment imported into Great Britain by post, any phytosanitary certificate, phytosanitary certificate for re-export or industry certificate required by article 7 to accompany that material shall be affixed to the outside of the package comprising the relevant material or, if the consignment of relevant material consists of more than one package, be affixed to the outside of one of the packages and copies of the certificate shall be affixed to the outside of each of the remaining packages.

### **Prohibition on removal of relevant material from an area of plant health control**

**10.**—(1) Subject to articles 11 and 29(3), no person shall remove or cause to be removed from an area of plant health control any relevant material referred to in sub-paragraph (a) or (b) of article 6(2) unless an inspector has discharged that relevant material or the removal of that relevant material is permitted under Part 6.

- (2) An area of plant health control is—
  - (a) the point of entry specified in paragraph (3) where relevant material is landed in Great Britain for the first time;
  - (b) a place close to the point of entry specified in paragraph (3) which has been designated as an area of plant health control by the Commissioners and by the Commissioners for Her Majesty’s Revenue and Customs; or
  - (c) an approved place of inspection.
- (3) The point of entry, for the purposes of paragraph (2), shall be—
  - (a) where the relevant material is transported by air, the airport;
  - (b) where the relevant material is transported by maritime or fluvial transport, the port; and
  - (c) where the relevant material is transported by rail, the rail freight terminal.

(4) Pending its removal from an area of plant health control, other than at an approved place of inspection, the importer of relevant material shall store it under the supervision of an inspector under such conditions as the inspector may direct and the importer shall be liable for the costs of such storage.

### **Exceptions from prohibition on removal of relevant material from area of plant health control**

**11.** The prohibition imposed by article 10(1) on the removal of relevant material from an area of plant health control unless it has been discharged by an inspector shall not apply to—

- (a) any relevant material which is in the course of its consignment between two third countries under appropriate customs procedures and without any change in its customs status and which is transported in such a way as to prevent the accidental escape of tree pests;
- (b) any trees or wood excepted by article 8 from the requirements in article 7; or
- (c) any relevant material which is consigned to Great Britain from another part of the European Community via a third country without any change in its customs status and which is transported in such a way as to prevent the accidental escape of tree pests.

## Plant health discharge

12.—(1) An inspector may discharge relevant material pursuant to article 10(1) if he is satisfied as to the matters referred to in paragraph (2).

(2) Subject to paragraphs (5) and (6), an inspector shall satisfy himself—

- (a) that the relevant material is free from any tree pest of a description specified in Schedule 1;
- (b) if listed in column 2 of Schedule 2, that the relevant material is not carrying or infected with a tree pest of a description specified in column 3 of that Schedule opposite the reference to the relevant material;
- (c) if listed in the second column of Annex II Part B of the Directive and in the course of its consignment to a protected zone listed in the fourth column opposite the reference to the relevant material, that the relevant material is not carrying or infected with a tree pest of a description specified in the first column opposite the reference to the relevant material;
- (d) if listed in column 2 of Part A or C of Schedule 4, that the relevant material complies with the requirements specified in column 3 of Part A or C, respectively, opposite the reference to the relevant material and, where there is one or more alternative requirement, the requirement declared in the phytosanitary certificate or phytosanitary certificate for re-export;
- (e) if listed in the first column in Annex IV, Part B of the Directive and in the course of its consignment to a protected zone listed in the third column opposite the reference to the relevant material, that the relevant material complies with the requirements specified in the second column opposite the reference to the relevant material and, where there is one or more alternative requirement, the requirement declared in the phytosanitary certificate or phytosanitary certificate for re-export;
- (f) that the relevant material corresponds with the description given to it in the phytosanitary certificate, phytosanitary certificate for re-export or industry certificate; and
- (g) that the relevant material is accompanied by the certificate or certificates required by article 7 and, where applicable, by a plant health movement document.

(3) For the purpose of satisfying himself as to any of the matters in paragraph (2)(a) to (e), an inspector may carry out an examination of a consignment or lot of relevant material and its packaging, including any wood packaging material and, where necessary, the vehicle transporting that consignment or lot—

- (a) in its entirety; or
- (b) on the basis of one or more representative samples from the consignment or from each lot forming part of the consignment.

(4) For the purpose of satisfying himself as to the matters in paragraph (2)(f), an inspector may carry out an identity check.

(5) Where the official body of destination of any relevant material landed in Great Britain for the purpose of transit has agreed with the Commissioners that it will be responsible for some or all of the matters referred to in paragraph (2)(a) to (f), an inspector shall only satisfy himself as to the matters referred to in paragraph (2)(g) and any matters referred to in paragraph (2)(a) to (f) not subject to the agreement.

(6) Where the official body of point of entry of any relevant material that has been consigned to Great Britain via another part of the European Community by way of transit has agreed with the Commissioners, as the official body of destination, that the Commissioners shall be responsible for some or all of the matters referred to in paragraph (2)(a) to (f), the matters as to which an inspector shall satisfy himself shall be limited accordingly.

(7) Where an inspector is satisfied as to the matters referred to in paragraph (2)(g) he shall—

- (a) stamp the phytosanitary certificate, phytosanitary certificate for re-export or industry certificate with the official stamp of the Commissioners and the date the certificate was delivered in accordance with article 9(1); and
  - (b) where applicable, complete the relevant headings of the plant health movement document.
- (8) An inspector may, for the purpose of performing a plant health check, require the occupier or other person in charge of the premises in which the checks is to take place to provide—
- (a) where appropriate, suitable areas of inspection; and
  - (b) adequate lighting.

### **Request to an officer for Revenue and Customs for material to be detained**

**13.**—(1) Where he has reasonable grounds for suspecting that there is a risk of spread of any tree pest from any relevant material, an inspector may request an officer for Revenue and Customs to exercise the power in article 14(1) for the purpose of enabling the inspector to enforce any provision of this Order.

- (2) A request under this article—
- (a) may identify the relevant material in any way; and
  - (b) shall be made—
    - (i) in writing; or
    - (ii) orally and confirmed in writing.

(3) Where an inspector issues a notice or takes any other action under this Order in respect of relevant material detained by an officer for Revenue and Customs under article 14(1) he shall advise that officer in writing of that notice or action.

### **Power of an officer for Revenue and Customs**

**14.**—(1) An officer for Revenue and Customs may, where requested by an inspector in accordance with article 13(1), detain for not more than two working days any relevant material or any container, package or cargo of any kind which has been or may have been in contact with that material and which is referred to in that request insofar as the material, container, package or cargo is under customs supervision pursuant to Article 37 of the Customs Code and has not been assigned a customs approved treatment or use within the meaning of Article 4(15) of that Code.

(2) The Commissioners for Her Majesty's Revenue and Customs may direct that any relevant material detained under paragraph (1) shall be dealt with during the period of its detention in such manner as they may specify.

(3) The importer of any relevant material detained under paragraph (1) shall be responsible for the costs of storage which arise during the period of its detention.

### **General provisions relating to certificates**

**15.**—(1) A phytosanitary certificate or phytosanitary certificate for re-export shall be completed by an authorised officer in accordance with the relevant requirements of this article and—

- (a) until 31st December 2009, shall—
  - (i) where it is issued by a contracting party to the IPPC, be in the form set out in Part A or B, respectively, of either Schedule 10 or Schedule 11; and
  - (ii) in any other case, be in the form set out in Part A or B, respectively, of Schedule 10; and

- (b) on and after 1st January 2010, shall be in the form set out in Part A or B, respectively, of Schedule 11.
- (2) An industry certificate shall be completed in accordance with the requirements of the Decision referred to in article 7(7) under which that certificate is authorised.
- (3) A phytosanitary certificate or phytosanitary certificate for re-export shall—
- (a) be issued by the responsible official body or the national plant protection organisation of the country of export or re-export in accordance with the provisions of Article V(1) of the IPPC;
  - (b) be issued in one of the official languages of the European Community;
  - (c) where it is issued in a language other than English, incorporate or be accompanied by a translation into the English language which, if the translation is a document separate from the certificate, shall be completed and signed by an authorised officer;
  - (d) be addressed to the “Plant Protection Organisations of the Member States of the European Community”; and
  - (e) be completed in typescript or block capitals.
- (4) A phytosanitary certificate or phytosanitary certificate for re-export issued in respect of any relevant material of a description specified in column 2 of Part A or C of Schedule 4 in which one or more alternative requirement is specified in column 3 of Part A or C, respectively, opposite the reference to that relevant material, shall specify under the heading “Additional declaration” the requirement that has been complied with by reference to the relevant position in Annex IV Part A Section I or Part B, respectively, of the Directive.
- (5) A phytosanitary certificate or a phytosanitary certificate for re-export shall be based on an inspection carried out not more than 14 days before the date of dispatch of the relevant material to which the certificate relates.
- (6) A phytosanitary certificate or phytosanitary certificate for re-export shall be completed not more than 14 days before the date of the dispatch of the consignment of relevant material which it is to accompany.

**Requirements to be met by relevant material prior to inspection at its place or country of destination**

**16.**—(1) This article applies to the relevant material referred to in sub-paragraph (a) or (b) of article 6(2) which—

- (a) is the subject of an agreement described in article 12(5) or (6); or
- (b) whether or not it is subject to an agreement referred to in sub-paragraph (a), is destined for an approved place of inspection,

before it has been discharged by an inspector pursuant to article 10(1).

(2) Relevant material to which this article applies shall not be moved within Great Britain or, where applicable, from Great Britain to any other place within the European Community, unless—

- (a) it is accompanied by a plant health movement document; and
- (b) save where the Commissioners have authorised otherwise, its packaging and the vehicles in which it is transported are sealed in such a way that there is no risk of it causing infestation, infection or contamination or of any change in the identity of the material.

(3) The importer of relevant material to which this article applies, other than relevant material whose destination is elsewhere in the European Community, shall give to the Commissioners notice of the following particulars three working days before it is landed—



- (a) the name, address and location of the approved place of inspection or other area of plant health control for which the relevant material is destined;
- (b) the scheduled date and time of arrival of the relevant material at the place referred to in paragraph (a);
- (c) if available, the individual serial number of the plant health movement document;
- (d) if available, the date and place at which the plant health movement document was drawn up;
- (e) the name, address and registration number of the importer; and
- (f) the reference number of the phytosanitary certificate, phytosanitary certificate for re-export or industry certificate required to accompany the relevant material,

and shall notify the Commissioners immediately in writing of any changes to such particulars.

(4) The address to which notice shall be given under paragraph (3) shall be such address as the Commissioners shall specify from time to time which may include an address for electronic communications.

### **Approved places of inspection**

**17.**—(1) In accordance with the provisions of this article, the Commissioners may approve a place of destination of relevant material referred to in sub-paragraph (a) or (b) of article 6(2) as an approved place of inspection in relation to that material.

(2) An application for a place of destination of relevant material as an approved place of inspection may be made to the Commissioners by an importer or other person responsible for that place in such form and containing such information as the Commissioners may specify.

(3) An approval may be granted subject to conditions, including conditions relating to the storage of relevant material, and may be withdrawn at any time if the Commissioners no longer consider that the place to which the approval relates is suitable for the purposes for which it was given.

(4) For the purposes of this article, the Commissioners may only approve a place of destination of relevant material that is the subject of an agreement described in article 12(6) if the agreement so provides.

(5) The Commissioners may only approve a place of destination of relevant material as an approved place of inspection where that place is approved by the Commissioners for Her Majesty's Revenue and Customs for use as a temporary storage facility as referred to in Article 185(1) of Commission Regulation 2454/93/EC<sup>(10)</sup> laying down provisions for the implementation of the Customs Code.

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<sup>(10)</sup> OJ No. L 253, 11.10.1993, p.1.