



PLANT HEALTH (DUTCH ELM DISEASE) ORDER 2021

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Statutory Document No. 2021/0148



Plant Health Act 1983

PLANT HEALTH (DUTCH ELM DISEASE) ORDER 2021¹

Laid before Tynwald: 20 July 2021

Coming into Operation: in accordance with article 2

The Department of Environment, Food and Agriculture makes the following Order under sections 2, 3, 4 and 6(3) of the Plant Health Act 1983.

1 Title

This Order is the Plant Health (Dutch Elm Disease) Order 2021.

2 Commencement

This Order comes into operation on 26 July 2021¹.

3 Interpretation

In this Order, unless the context otherwise requires —

“**the 1992 Order**” means the Dutch Elm Disease (Restriction on Movement of Elms) Order 1992²;

“**appointed officer**” means a person appointed by the Department in accordance with article 4(1) of this Order;

“**chipping**” means using a mechanical chipper to chop, cut, or break the elm wood into pieces which are small enough to not be viable habitat for the insect vector of the disease;

“**consignment**” means any amount of elm wood or isolated elm bark, including containers, pallets, boxes and other packaging made of elm wood and used in the carriage or transport of any goods, and a reference to a consignment includes part of a consignment;

¹ Section 6(1) of the Plant Health Act 1983 provides that an order made under that Act shall be laid before Tynwald as soon as may be after being made, and if Tynwald at the sitting before which such order is so laid resolves that the order shall be annulled the order shall thereupon cease to have effect.

² GC 520/92.

“**the disease**” means the disease in elms caused by the fungi *Ophiostoma ulmi* and *Ophiostoma novo-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;

“**elm wood**” means any part of an elm which retains some or all of its bark or any part of the rounded surface of the tissues immediately below the bark, but does not include chips;

“**importer**”, in relation to any elm wood or isolated bark from an elm, includes any person who, whether as owner, consignor or consignee, agent or broker, is in possession of, or is in any way entitled to the custody or control of, such elm wood or isolated elm bark;

“**isolated elm bark**” means bark which has been removed or become detached from an elm;

“**premises**” includes any land, vehicle, vessel, aircraft or freight container; and

“**vessel**” includes hovercraft.

4 Appointment and powers of appointed officers

(1) For the purpose of performing its functions under this Order the Department may appoint such persons as it thinks fit to exercise the powers of an appointed officer under this Order.

(2) An appointed officer —

- (a) who has reasonable grounds for suspecting that diseased elm may be present;
- (b) after giving to the occupier of any land not less than seven days’ notice of the intention to enter on the land; and
- (c) upon production if so required of a duly authenticated document showing that officer’s authority,

may at all reasonable times enter upon any land for any purpose connected with the execution of this Order.

(3) An appointed officer who has entered upon any land in accordance with paragraph (2) may examine, by removing bark, cutting into the wood or otherwise, any elms on the land and may —

- (a) mark any elm as appears to that officer to be infected with the disease;
- (b) cut off or otherwise detach and take away any part of any elm for the purpose of further examination or tests;
- (c) take photographs of any elm, the surrounding area and any potential access and egress points.

(4) Without prejudice to paragraph (3), an appointed officer who has entered upon any land in accordance with paragraph (2) may —

- (a) cut down, cut off or otherwise detach or cause to be cut down, cut off or otherwise detached;
 - (b) destroy by fire or by chipping on the land;
 - (c) in the case of elms which have not have been made free of bark, subject to the 1992 Order, remove from the land and destroy by fire or by chipping elsewhere, or cause to be so removed and destroyed, any elms which are infected with the disease or which the appointed officer reasonably suspects are so infected and which are present on the land (whether or not the elms are present as a consequence of the exercise by the appointed officer of the powers given to that officer by sub-paragraph (a) of this paragraph).
- (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 that officer's instructions and by such equipment as appear to that officer to be necessary.
- (6) A person accompanying an appointed officer under paragraph (5) of this article may remain on the land and from time to time re-enter, with or without the appointed officer and with such equipment as mentioned in that paragraph, for the purpose of carrying out such work in such manner as the appointed officer may direct, subject to the production, if requested by the occupier of the land, of that person's authority to do so granted by the Department or by the appointed officer on the Department's behalf.

5 Further powers to prevent spread of infection

- (1) The Department, on being satisfied that the disease is present in any elms on any land, may serve upon the occupier of that land or upon any person in whose control or management the elms appear to be, a notice in writing requiring that person, within such reasonable time or during such reasonable period as may be specified in the notice, to do one or more of the following things —
- (a) to cut down to ground level the specified elms;
 - (b) to cut off or otherwise detach such parts of the specified elms as may be specified in the notice;
 - (c) to destroy the specified elms by fire or by chipping on the land;
 - (d) subject to the 1992 Order, to remove the specified elms from the land and to destroy or cause to be destroyed by fire or by chipping, at the place to which those elms are removed, all parts of those elms which have not been made free of bark and any detached bark;
 - (e) to treat the specified elms in such manner as may be described in the notice;
 - (f) to take such other steps for the prevention of spread of the disease as may be specified in the notice.

- (2) A notice served under paragraph (1) may —
- (a) permit the person upon whom the notice is served to choose between any or such combination of the options in paragraph (1) (a) – (f) as may be specified in the notice;
 - (b) 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 prevents any person (“P”) upon whom a notice has been served under paragraph (1) or paragraph (2) from completely destroying the specified elms by fire on the land where they are present, and if P so destroys them P is deemed to have complied with the notice in so far as it relates to those elms.
- (4) If upon an inspection by an appointed officer it appears that any person has failed to carry out the requirements of a notice served pursuant to paragraph (1) or paragraph (2) within the time or during the period specified in such notice, an appointed officer —
- (a) without prejudice to any proceedings under this Order consequent upon such failure; and
 - (b) after giving to the occupier of the land on which the specified elms are located not less than 7 days’ notice of that officer’s intention so to do,
- may enter on the land and carry out such requirements as are specified in the notice or as the officer thinks fit.
- (5) The cost of carrying out the requirements under paragraph (4) is recoverable by the Department as a debt due from the person on whom the notice was served.
- (6) In this article, “the specified elms” means any elms specified in a notice served under paragraph (1) or (2) in respect of which such action as is specified in the notice is required.

6 Form and content of notices of intended entry

A notice of intended entry given under article 4(2) or article 5(4) must —

- (a) be in writing;
- (b) state the purpose of the intended entry; and
- (c) state that the appointed officer may be accompanied by other persons acting under that officer’s instructions and by equipment.

7 Restrictions on the landing of elm wood and isolated elm bark

- (1) The landing in the Island of a consignment of elm wood is prohibited unless before export or removal to the Island, the bark of all the elm wood has been removed.
- (2) The landing in the Island of isolated elm bark is prohibited.

- (3) For the purpose of this Order a consignment is deemed to have been landed in the Island immediately it is unloaded or taken out of, or in any other manner leaves a vessel, vehicle or aircraft and “land” and “landing” is construed accordingly.

8 Examination and sampling

If an appointed officer knows or has reasonable grounds for suspecting that a consignment has been landed or is likely to be landed in the Island, that appointed officer may, upon production if so required of that appointed officer’s authority, enter any premises and may do all or any of the following—

- (a) examine and take samples of the consignment and any fungi or potential insect vectors of the disease found in the consignment;
- (b) for the purposes of examination —
 - (i) open;
 - (ii) authorise any person to open on that appointed officer’s behalf; or
 - (iii) require the importer or the person in charge of the consignment to open, any container, bundle or other package in the consignment;
- (c) if and so far as is necessary for the purposes of examination (including examination and analysis of samples), prohibit entirely or to the extent indicated by that appointed officer the movement of any consignment.

9 Destruction, re-exportation or disposal under licence

- (1) Subject to paragraph (2), if a consignment is landed in the Island in contravention of this Order, it must be —
- (a) immediately re-exported or removed from the place of landing in the Island by and at the expense of the importer;
 - (b) destroyed as soon as reasonably practicable by and at the expense of the importer; or
 - (c) disposed of in accordance with the terms of a licence granted by the Department or an appointed officer to the owner or the person who has charge of the consignment.
- (2) Where the Department or an appointed officer is satisfied that at the time of landing in the Island a consignment was not free from the disease —
- (a) the Department or the appointed officer must inform the importer in writing that it or the officer is so satisfied;
 - (b) on being informed under sub-paragraph (a), the importer must not re-export or remove the consignment from the Island; and

- (c) the consignment must be destroyed or disposed of in accordance with paragraph (1)(b) or (c).
- (3) Any destruction or disposal required by paragraph (1) or (2) must be —
 - (a) carried out to the satisfaction of; and
 - (b) undertaken at a place designated by,
an appointed officer and, except with the written authority of the Department or an appointed officer, a person must not move the consignment other than to the place designated by the appointed officer.
- (4) If any person fails to comply with paragraph (1) or (2), without prejudice to any proceedings under this Order consequent upon such failure, an appointed officer or a person authorised by that appointed officer for the purpose may enter any premises in which the consignment may be and may remove and destroy it.

10 Information regarding imported elm wood and isolated elm bark

- (1) Subject to paragraph (3), if so required by demand in writing by the Department or an appointed officer, any person who —
 - (a) has or has had in their possession or under their charge; or
 - (b) as auctioneer, salesman or otherwise, has sold or offered for sale,
any elm wood or any isolated elm bark, which the Department or an appointed officer knows or has reasonable grounds for suspecting to have been landed in the Island, must give to the Department or the appointed officer within the time specified in that demand any information that person possesses as to the persons who have, have had or are likely to have or to have had the elm wood or isolated elm bark in their possession or under their custody or control.
- (2) Any information given under paragraph (1) must not be available as evidence against a person giving the information in any prosecution under this Order, except in respect of an alleged failure to comply with this article.

11 Offences

- (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);
 - (b) fails to comply with a demand made under article 10(1);
 - (c) lands a consignment of elm wood in the Island other than in accordance with article 7(1);
 - (d) lands a consignment of isolated elm bark in the Island in contravention of article 7(2);

- (e) fails to comply with the requirements of article 9 or with the terms of a licence granted under that article;
- (f) fails to give an appointed officer (“O”), or a person acting under O’s instructions (“A”), all reasonable facilities to enable O or A to exercise O or A’s powers under this Order;
- (g) wilfully obstructs or impedes O or A in the exercise of O or A’s powers under this Order for any purpose connected with the execution of this Order,

is guilty of an offence against this Order and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (2) A person does not commit an offence under paragraph (1)(a) of failure to comply with any requirement of a notice mentioned in that paragraph where the notice was not served in accordance with Division 5 of Part 4 of the Interpretation Act 2015.
- (3) Proceedings for an offence under —
 - (a) paragraph (1)(a);
 - (b) paragraph (1)(f) or (g), where the failure, obstruction or impeding is respect of powers exercised by A or O permitted by this Order under section 3 of the Plant Health Act 1983,

must be instituted within the period specified in section 3(5) of the Plant Health Act 1983.

12 Amendments

- (1) The 1992 Order is amended as follows —
 - (a) in article 2 (interpretation) —
 - (i) omit the definition of “the 1981 Order”; and
 - (ii) in the appropriate place in the definitions insert —

“the 2021 Order” means the Plant Health (Dutch Elm Disease) Order 2021³; and
 - (b) in article 3 (restriction on movement of elms), for “as defined in article 2 of the 1981 Order”, substitute “as defined in article 3 of the 2021 Order”.
- (2) The Plant Health (Elm Bark Beetle) Order 2001⁴ is amended as follows —
 - (a) in article 2 (interpretation), in the definition of “appointed officer”, for “article 3 of the Dutch Elm Disease Order 1981”, substitute “article 4 of the Plant Health (Dutch Elm Disease) Order 2021⁵”; and

³ SD 2021/0148.

⁴ SD No. 39/01.

⁵ SD 2021/0148.

- (b) for article 5(2) (notices), substitute —
- (2)

 Division 5 (service of documents) of Part 4 of the Interpretation Act 2015 shall apply for the purposes of this Order. ⁶⁹.

13 Revocations

In so far as they may still be in operation, the following Orders are revoked —

- (a) the Dutch Elm Disease Order 1981⁶; and
- (b) the Importation of Elms (Prohibition) Order 1982⁷.

MADE 28 JUNE 2021

⁶ GC 184/81.

⁷ GC 257/82.

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.