
STATUTORY INSTRUMENTS

2005 No. 2517

The Plant Health (Forestry) Order 2005

PART 1

GENERAL

Title and commencement

1. This Order may be cited as the Plant Health (Forestry) Order 2005 and shall come into force on 1st October 2005.

General interpretation

2.—(1) In this Order—

“area of plant health control” is defined in article 10(2);

“authorised officer” means—

- (a) an authorised representative of the responsible official body of the country in which a plant passport is issued, a public servant acting under the authority of such a representative or a qualified agent employed by the responsible official body, in any case who shall be appropriately qualified;
- (b) a person permitted by Swiss legislation to issue a Swiss plant passport; or
- (c) an authorised representative of the responsible official body or the national plant protection organisation of the country in which a phytosanitary certificate or phytosanitary certificate for re-export or translation of a phytosanitary certificate or a phytosanitary certificate for re-export is issued, or a public officer acting under the authority of such a representative;

“bark-free” means wood from which all bark, excluding the vascular cambium, ingrown bark around knots and bark pockets between rings of annual growth, has been removed;

“Commissioners” means the Forestry Commissioners;

“consignment” has the same meaning as in Article 2(1)(p) of the Directive where that term is used in Part 2 or in relation to any relevant material referred to in that Part;

“Customs Act” means the Customs and Excise Management Act 1979(1);

“debarked” means wood which has undergone a process by which some, but not necessarily all, of its bark has been removed;

“the Directive” means Council Directive [2000/29/EC](#) of(2) on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community as amended by Commission Directives [2001/33/EC](#)(3),

(1) [1979 c. 2](#).

(2) OJ No. L 169, 10.7.2000, p.1.

(3) OJ No. L 127, 9.5.2001, p.42; and see the associated Commission Directive [2001/32/EC](#), OJ No. L 127, 9.5.2001, p.38.

2002/28/EC(4), 2002/36/EC(5), 2003/22/EC(6)2003/47/EC(7), 2004/102/EC(8) and 2005/16/EC(9), Council Directives 2002/89/EC(10) and 2005/15/EC(11) and Article 20 and Annex II of the Act concerning the Conditions of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded(12);

“dunnage” means—

- (a) in Part A of Schedule 4 and in item 3(c)(ii) in Part B of Schedule 8, wood used to wedge or support non-wood cargo; and
- (b) elsewhere in this Order, wood used to wedge or support any cargo;

“EC transit goods” means any relevant material introduced into Great Britain from a third country via another part of the European Community;

“Euro-Mediterranean area” means the geographical area comprising Europe, Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Syria, Tunisia and the area of Turkey east of the Bosphorus Strait known as Anatolia;

“Europe” includes European Russia, Belarus, Georgia, Ukraine, Turkey (except the area east of the Bosphorus Strait known as Anatolia), Kazakhstan (except the area east of the Ural river) and the Canary Islands;

“European Community” means the territories of the member States including the Isle of Man and the Channel Islands but excluding the Canary Islands, Ceuta, Melilla and the French Overseas Departments;

“forestry trader” means—

- (a) an importer of relevant material,
- (b) a producer of relevant material,
- (c) a person in charge of premises used for the storage, aggregation or dispatch of consignments of relevant material, or
- (d) a person who in the course of a trade or business divides up or combines consignments of relevant material;

“fruit” means fruit in the botanical sense but does not include dried, dehydrated, lacquered or deep frozen fruit;

“importer”, in relation to any tree pest or relevant material at any time between their landing from a third country and the time when they are discharged by an inspector under this Order, includes any owner or other person for the time being possessed of or beneficially interested in the tree pest or relevant material;

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

“IPPC” means the International Plant Protection Convention 1951(13);

(4) OJ No. L 77, 20.3.2002, p.23; and see the associated Commission Directive 2002/29/EC, OJ No. L 77, 20.3.2002, p.26.

(5) OJ No. L 116, 3.5.2002, p.16.

(6) OJ No. L 78, 25.3.2003, p.10; and see associated Commission Directive 2003/21/EC, OJ No. L 78, 25.5.2003, p.8.

(7) OJ No. L 138, 5.6.2003, p.47; and see the associated Commission Directive 2003/46/EC, OJ No. L 138, 5.6.2003, p.45.

(8) OJ No. L 309, 6.10.2004, p.9.

(9) OJ No. L 57, 3.3.2005, p.19; and see the associated Commission Directive 2005/18/EC, OJ No. L 57, 3.3.2003, p.25.

(10) OJ No. L 355, 30.12.2002, p.45.

(11) OJ No. L 56, 2.3.2005, p.12.

(12) OJ No. L 236, 23.9.2003, p.33.

(13) Adopted in 1951 (Treaty Series No. 16 (1954), Cmd 9077) and revised in 1979 (Miscellaneous Series No. 1 (1981), Cmd 8108).

“ISPMNo. 15” means International Standard for Phytosanitary Measures No. 15 of March 2002(14) on Guidelines for regulating wood packaging material in international trade, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations;

“isolated bark” means bark which has been removed or become detached from a living, felled or fallen tree or from any part of such tree;

“landed” means introduced into Great Britain by any means and includes imported by post, and “land” and “landing” shall be construed accordingly;

“lot” has the same meaning as in Article 2(1)(o) of the Directive;

“national plant protection organisation” means the service established by the government of a third country to discharge the functions specified in Article IV(1)(a) of the IPPC, details of which have been notified—

- (a) in the case of contracting parties to the IPPC, to the Director of the Food and Agriculture Organisation of the United Nations; and
- (b) in all other cases, to the European Commission;

“North America” means the geographical area comprising Canada, Mexico and the USA;

“official” in relation to any testing or other procedure required by this Order to be carried out in respect of any relevant material means carried out by or under the supervision of the responsible official body or the national plant protection organisation of the country in which the testing or other procedure is carried out and “officially” shall be construed accordingly;

“official body of destination” has the same meaning as in article 2(1)(l) of the Directive;

“official body of point of entry” has the same meaning as in article 2(1)(k) of the Directive;

“official label” means a label that meets the relevant requirements set out in Schedule 9, issued by or with the authority of the responsible official body for the member State in which the official label is issued;

“official statement” means a statement issued by an authorised officer or a statement included in a plant passport;

“phytosanitary certificate” means a certificate which complies with the relevant requirements of articles 7 and 15;

“phytosanitary certificate for re-export” means a certificate which complies with the relevant requirements of articles 7 and 15;

“place of production” means any premises, normally worked as a unit, together with any contiguous land in the same ownership or occupation as such premises;

“plant health check” means an examination carried out under article 12(3);

“plant health movement document” means a document which meets the requirements in Schedule 13;

“plant passport” means a label and, where appropriate, an accompanying document that meets the relevant requirements set out in Schedule 9, issued by or with the authority of the responsible official body for the member State in which the plant passport is issued, and includes a replacement plant passport;

“planting” has the same meaning as in Article 2(1)(c) of the Directive;

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

(14) Available from the IPPC Secretariat, AGPP-FAO, Viale Delle Terme di Caracalla, 00100 Rome, Italy and <http://www.ippc.int/IPP/En/default.htm>.

“producer” in relation to relevant material means a person who grows or makes the material in the course of a trade or business;

“protected zone” means a zone listed in the third column of Annex IV, Part B of the Directive opposite the reference to the relevant material to which it relates;

“register” means the register of forestry traders maintained under article 24(1);

“registered” in relation to a forestry trader means a trader whose particulars are listed in the register, and “registration” shall be construed accordingly;

“relevant material” means any tree, wood, isolated bark, soil or growing medium;

“responsible official body” means either the body described in paragraph (i) or the body described in paragraph (ii) of Article 2(1)(g) of the Directive;

“round wood” means wood which is not sawn lengthwise;

“seed” means seed in the botanical sense other than seed not intended for planting;

“Swiss plant passport” means a label and, where appropriate, an accompanying document, issued in Switzerland in accordance with Swiss legislation, which—

- (a) contains information which gives evidence that the legislation in Switzerland relating to plant health standards and special requirements for relevant material moving into and within Switzerland have been complied with; and
- (b) relates to relevant material listed in Part A of Schedule 8;

“third country” means a country or territory other than one within the European Community;

“tree” means a living tree or shrub, or a living part of a tree or shrub, at any stage of growth; and living parts of a tree shall include—

- (a) fruit or seed,
- (b) branches with or without foliage,
- (c) a tree or shrub that has been cut and which retains any foliage,
- (d) leaves or foliage,
- (e) a tree or shrub in tissue culture, and
- (f) bud wood, cuttings or scions;

“tree or shrub in tissue culture” means a tree or shrub growing in a clear liquid or clear solid aseptic culture medium in a closed transparent container;

“trees intended for planting” means trees which at the time of their landing in Great Britain are—

- (a) planted and are intended to remain planted or to be replanted, or
- (b) not planted but are intended to be planted;

“tree pest” means a pathogen, or any living organism, other than a vertebrate animal, in any stage of its existence, which is injurious or likely to be injurious to any tree or wood and includes a culture of such pathogen or organism;

“USA” means the United States of America (except the state of Hawaii);

“wood”, save where expressly provided otherwise, means—

- (a) any wood which retains part or all of its natural round surface, with or without bark; or
- (b) wood in the form of chips, particles, shavings, sawdust, wood waste or scrap; and
- (c) whether or not satisfying the requirements of paragraphs (a) or (b)—
 - (i) dunnage, or
 - (ii) wood packaging material; and

“wood packaging material” means wood in the form of packing cases, boxes, crates, drums or similar packings, pallets, pallet collars, box pallets or other load boards in use in the transport of objects of any kind.

(2) “Transit”, for the purposes of this Order—

(a) where it occurs in article 12(5) or (6), has the same meaning as in Article 2(1)(r) of the Directive; and

(b) where it occurs anywhere else in this Order shall bear its ordinary meaning.

(3) Any reference in this Order to the European Community, to a member State or a third country includes a reference to a state, country, principality, province or region within the European Community, member State, or third country, as the case may be.

(4) Any reference in this Order to a numbered article or a numbered Schedule with no corresponding reference to a specific instrument shall be construed as a reference to the article or Schedule so numbered in this Order.

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⁽¹⁵⁾ 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⁽¹⁶⁾;

“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⁽¹⁷⁾ in the part of Great Britain where the notice is given or the material is detained; and

⁽¹⁵⁾ OJ No. L 302, 19.10.1992, p.1.

⁽¹⁶⁾ 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.

⁽¹⁷⁾ 1971 c. 80.

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

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(18);
- (b) 93/360/EEC(19);
- (c) 93/365/EEC(20);
- (d) 93/422/EEC(21);
- (e) 93/423/EEC(22); or
- (f) 2004/95/EC(23).

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)—

(18) OJ No. L 148, 19.6.1993, p.41.
 (19) OJ No. L 148, 19.6.1993, p.45.
 (20) OJ No. L 151, 23.6.1993, p.38.
 (21) OJ No. L 195, 4.8.1993, p.51.
 (22) OJ No. L 195, 4.8.1993, p.55.
 (23) 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⁽²⁴⁾ laying down provisions for the implementation of the Customs Code.

PART 3

INTERNAL COMMUNITY CONTROLS ON MOVEMENT

Prohibitions and restrictions on landing tree pests and relevant material

18.—(1) Subject to paragraph (2), the landing in Great Britain of tree pests or relevant material of the following descriptions which are introduced into Great Britain from another part of the European Community, whether as country of origin or country of transit, is prohibited—

- (a) any tree pest of a description specified in Schedule 1;

(24) OJ No. L 253, 11.10.1993, p.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) 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 21, 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;
- (f) subject to article 21, any relevant material not prohibited under sub-paragraph (d) which is of a description specified in column 2 of Part B 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
- (g) subject to article 21 and without prejudice to any requirements specified in column 3 of Part A of Schedule 4 or in column 3 of Part B 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) Paragraph (1) shall not apply to relevant material prohibited from landing in Great Britain by article 5(1)(e) or (f).

Prevention of the spread of tree pests

19.—(1) No person shall knowingly keep, store, sell, plant, move or otherwise dispose of or knowingly cause or permit to be kept, stored, sold, planted, moved or otherwise disposed of—

- (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 in relation 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; or
- (d) any relevant material landed in contravention of article 5(1)(d), (e) or (f) or article 18(1)(d) (e), (f) or (g).

(2) Nothing in paragraph (1) shall prohibit the keeping, storing, moving or otherwise disposing of any tree pest or relevant material referred to in that paragraph in compliance with any requirement imposed by an inspector under Part 6 in respect of that tree pest or relevant material.

Requirements for plant passports

20.—(1) Subject to paragraph (7) and article 21, the landing in or movement within Great Britain by any person of any relevant material of a description specified in Part A of Schedule 6 comprising EC transit goods or material consigned to Great Britain from another part of the European Community is prohibited, unless that relevant material is accompanied by a plant passport.

(2) Subject to paragraph (7) and articles 21 and 22, the landing in or movement within Great Britain by any person of any relevant material of a description specified in Part B of Schedule 6 comprising EC transit goods or material consigned to Great Britain from another part of the European Community is prohibited, unless that relevant material is accompanied by a plant passport which is valid for Great Britain as a protected zone.

(3) No person shall move within Great Britain any relevant material, which if comprised of EC transit goods or relevant material consigned to Great Britain from another part of the European Community would be subject to paragraph (1), after the phytosanitary certificate accompanying it has been officially stamped in accordance with article 12(7)(a) unless it is accompanied by a plant passport.

(4) Subject to article 22, no person shall move within Great Britain any relevant material, which if comprised of EC transit goods or material consigned to Great Britain from another part of the European Community would be subject to paragraph (2), after the phytosanitary certificate accompanying it has been officially stamped in accordance with article 12(7)(a) unless it is accompanied by a plant passport which is valid for Great Britain as a protected zone.

(5) Subject to article 21, no person shall consign from Great Britain to another part of the European Community any relevant material of a description specified in Part A of Schedule 7 unless that relevant material is accompanied by a plant passport.

(6) Subject to article 21, no person shall consign from Great Britain to a protected zone in another part of the European Community any relevant material of a description specified in Part B of Schedule 7 unless that relevant material is accompanied by a plant passport which is valid for that protected zone.

(7) The prohibitions imposed on landing by paragraphs (1) and (2) shall not apply to relevant material in respect of which the Commissioners have agreed, pursuant to an agreement described in article 12(6), to carry out a plant health check.

Exceptions from certain prohibitions and requirements

21. The prohibitions on landing in article 18(1)(e), (f) and (g) and the requirements in article 20(1), (2), (5) and (6) for certain relevant material to be accompanied by a plant passport shall not apply to small quantities of any relevant material, not showing any signs of the presence of any tree pest, which—

- (a) is not intended for use in the course of a trade or business; and
- (b) is intended for household use.

Validity of plant passports for Great Britain

22.—(1) Where a person moves relevant material of a description specified in Part B of Schedule 6 through Great Britain to a destination outside Great Britain, he shall not be required to produce a plant passport which is valid for Great Britain as a protected zone, if paragraph (2) or (3) applies.

(2) A plant passport shall not be required in respect of relevant material described in paragraph (1) if that material originates in Great Britain.

(3) A plant passport shall not be required in respect of relevant material described in paragraph (1)

- (a) which during transit through Great Britain is accompanied by a document of a type normally used for trade purposes which certifies that the material originates outside Great Britain and is in transit to a final destination outside Great Britain; and

- (b) whose packaging and any vehicle used in connection with whose transit through Great Britain is—
 - (i) free from soil and plant debris;
 - (ii) free from any relevant tree pest in relation to which Great Britain is a protected zone;
 - (iii) of such a nature or construction as to ensure that, if any relevant tree pest is present in the relevant material, there is no risk of its spreading from the packaging or the vehicle as the case may be; and
 - (iv) sealed immediately after packaging or where appropriate after loading, and remains sealed during transit through Great Britain.

General provisions relating to plant passports

23.—(1) Any alteration or erasure in a plant passport shall automatically invalidate that plant passport unless the alteration or erasure is certified by the authorised officer or the forestry trader authorised under article 28 to issue the plant passport placing his hand written initials next to the alteration or erasure.

(2) A plant passport relating to any relevant material shall be treated as accompanying that relevant material only if the plant passport is—

- (a) affixed to the relevant material or to the packaging of that material by an authorised officer, the forestry trader authorised to issue it or an inspector; or
- (b) carried in the vehicle transporting that material.

(3) A plant passport, insofar as it comprises an official label, shall be affixed in such a way that it cannot be re-used.

(4) A person may only issue a replacement plant passport—

- (a) to replace a plant passport issued in respect of a consignment—
 - (i) that has been divided up;
 - (ii) that has been combined, or part of which has been combined, with another consignment; or
 - (iii) whose plant health status has changed; and
- (b) if he is satisfied that the relevant material to which the replacement plant passport will relate—
 - (i) can be identified; and
 - (ii) is free from any risk of infestation by a tree pest specified in either Schedule 1 or 2.

PART 4

REGISTRATION OF FORESTRY TRADERS AND AUTHORITY TO ISSUE PLANT PASSPORTS

Register of forestry traders

24.—(1) The Commissioners shall maintain a register listing the following particulars with respect to each forestry trader who meets the requirements of this Part:

- (a) the name of the forestry trader;
- (b) the name of the person responsible for making the application where that person is not the forestry trader;

- (c) the trading name of the forestry trader where that name is different from that of the forestry trader;
- (d) details of those activities to which this Order applies which the forestry trader undertakes or intends to undertake;
- (e) the address of the premises at which the forestry trader undertakes or intends to undertake the activities referred to in sub-paragraph (d); and
- (f) a registration number unique to the forestry trader.

(2) The register maintained under paragraph (1) shall be open to inspection by the European Commission.

Obligation to register

25.—(1) Subject to paragraph (2), no forestry trader shall engage in any activity to which this Order applies unless he is registered in respect of the activity and the premises at which it takes place.

(2) The requirement in paragraph (1) for a forestry trader to be registered shall not apply to a producer whose entire production and sale of relevant material is intended for final use by persons who are not involved in tree production in the course of a trade or business.

(3) Entries on the register kept under article 15 of the Plant Health (Forestry) (Great Britain) Order 1993(25) on the day before the date of the coming into force of this Order shall, subject to the provisions of this Part, remain in effect for the purposes of this Order as if entered on the register maintained under article 24(1).

Registration requirements

26.—(1) An application for registration shall be made in writing to the Commissioners and shall be in such form and contain such information as the Commissioners may from time to time reasonably require to enable them to register the plant trader in respect of the activity and premises in relation to which the application is made.

(2) If, after a forestry trader has applied to the Commissioners to be registered under paragraph (1) but before registration has taken place, there is any change in his circumstances recorded in the application, he shall notify the Commissioners immediately in writing of any such change.

(3) Every registered forestry trader shall notify the Commissioners immediately in writing of any change in the particulars listed in the register with respect to him.

(4) Subject to paragraph (5), the Commissioners shall register a forestry trader who meets the requirements of this article in respect of the activity and premises in relation to which he has applied to be registered and shall notify the plant trader when registration has taken place.

(5) The Commissioners shall only register a forestry trader in respect of an activity or premises if they are satisfied that he is able and willing to comply with the conditions specified in article 27(1).

Conditions for maintaining registration as a forestry trader

27.—(1) A registered forestry trader shall in relation to the activities and premises to which his registration relates comply with the following conditions:

- (a) he shall keep an accurate plan of the premises;
- (b) he shall keep a record of relevant material purchased by him or brought onto the premises for storage, planting or production on those premises, and of relevant material under production on or dispatched from those premises;

- (c) he shall keep all documents, created or received by him, relating to the records kept under subparagraph (b), for at least one year from the date he created or received them;
- (d) he shall designate an individual (whether himself or another) who is technically experienced in relation to the activities carried out on the premises and related plant health matters affecting the premises who shall be available to liaise with the Commissioners in relation to matters arising under this Order;
- (e) he shall examine his premises and relevant material at such times and in a manner specified in guidelines issued from time to time by the Commissioners;
- (f) he shall make a declaration at such time and in such form as the Commissioners may from time to time require that he is able and willing to comply with the conditions specified in sub-paragraphs (a) to (e); and
- (g) he shall comply with any other conditions which may be specified by the Commissioners which they consider necessary to enable them to assess the presence of or spread of any tree pest on the premises by reason of the condition of those premises.

(2) Where the Commissioners are satisfied that a registered forestry trader has failed to comply with any of the conditions specified in paragraph (1) they may suspend his registration until they are satisfied that he is able and willing to comply with those conditions.

Authority to issue plant passports

28.—(1) Where a registered forestry trader wishes to issue plant passports in relation to any relevant material to be moved from his premises he shall apply to the Commissioners for the authority to do so.

(2) An application under paragraph (1) shall be in writing, shall give such notice as the Commissioners may reasonably specify to allow them to undertake any necessary examination of the premises to which the application relates and of any relevant material there and shall contain such particulars in relation to the relevant material produced, grown, stored or otherwise present on those premises as the Commissioners may from time to time reasonably require.

(3) The Commissioners shall grant an authority under paragraph (1) only if, having regard to any examination of the premises to which the application relates and of any relevant material there, they are satisfied—

- (a) that the premises and relevant material are free from any relevant organisms; and
- (b) where any requirements are specified under this Order in relation to the relevant material, those requirements have been complied with.

(4) The Commissioners' authority to issue plant passports shall be given in writing and may be granted subject to such conditions as they consider appropriate to ensure that the relevant requirements of this Order are complied with, including a condition limiting any territories in which such plant passports shall be valid.

(5) The Commissioners may suspend the operation of an authority to issue plant passports entirely or in relation to specified premises or relevant material if, having regard to any examination of any premises of the registered forestry trader and any relevant material there, they are not satisfied that—

- (a) the premises or the relevant material are free from any relevant organisms; or
- (b) where any requirements are specified under this Order in relation to the relevant material, those requirements have been complied with.

(6) The Commissioners may suspend the operation of or vary to the extent they consider necessary an authority to issue plant passports if they are satisfied that the registered forestry trader has—

- (a) failed to comply with any of the conditions specified in article 27(1);

- (b) failed to notify them in accordance with article 26(3) of any change in the particulars listed in the register with respect to him;
 - (c) failed to comply with a requirement in a notice served on the trader under article 31; or
 - (d) failed to comply with any conditions in the authority issued by them under paragraph (4).
- (7) For the purposes of this article “relevant organism” means—
- (a) any tree pest specified in Schedule 1; or
 - (b) in relation to relevant material of a description specified in Schedule 2, any tree pest of a description specified in that Schedule opposite the reference to that relevant material.

PART 5

SWISS TRADE AND SWISS PLANT PASSPORTS

Swiss trade and Swiss plant passports

29.—(1) Where relevant material listed in Part A of Schedule 8 has been consigned directly from Switzerland to Great Britain, any requirements in article 7 for that relevant material to be accompanied by a phytosanitary certificate shall be deemed to be satisfied by its being accompanied by a Swiss plant passport.

(2) Any requirements in article 7 for relevant material to be accompanied by a phytosanitary certificate shall not apply to relevant material that has been introduced into Great Britain from Switzerland to Great Britain where that material is listed in Part B but not in Part A of Schedule 8.

(3) The requirements in articles 6 and 10 shall not apply to relevant material which is—

- (a) accompanied by a Swiss plant passport pursuant to paragraph (1); or
- (b) of a description referred to in paragraph (2).

(4) Where relevant material listed in Part A of Schedule 8 is introduced into Great Britain from Switzerland via another part of the European Community any requirements in Part 3 for that relevant material to be accompanied by a plant passport shall be deemed to be satisfied by its being accompanied by a Swiss plant passport.

PART 6

MEASURES TO CONTROL THE LANDING OF RELEVANT MATERIAL AND PREVENT THE SPREAD OF TREE PESTS

Examination, sampling and marking

30.—(1) Subject to article 37, an inspector shall have a right on producing his authority, if so requested, at all reasonable times to enter any premises for the purpose of enforcing the provisions of this Order and in particular—

- (a) checking compliance with any provision of this Order; or
- (b) carrying out an examination of a forestry trader’s premises or of relevant material or documents or records on such premises for any purpose in connection with the granting or suspending of any authority to issue a plant passport under article 28.

(2) An inspector entering premises by virtue of paragraph (1) or of a warrant granted under article 37 may—

- (a) examine, photograph or mark any part of the premises or any object on the premises;
 - (b) take samples of or from any tree pest or relevant material or from any container or package, or any material which has been or may have been in contact with such pest or relevant material; and
 - (c) inspect or make copies of any documents or records (in whatever form they may be held) relating to the production of or trade in any relevant material.
- (3) An inspector may, for the purpose of exercising any of his powers under paragraph (2), open, or authorise any person to open on his behalf any container or package or require the owner or any person in charge of any container or package to open it, in such manner as the inspector may specify.
- (4) An inspector may, so far as is necessary to enable him to exercise any of the powers conferred by paragraph (2), prohibit entirely or to such extent as he may specify the movement, treatment or destruction of any tree pest or relevant material, container or package, or any material which may have been in contact with such pest or relevant material.
- (5) Where any such record or document as is mentioned in paragraph 2(c) is kept by means of a computer, an inspector may—
- (a) have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the record or document; and
 - (b) require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require.
- (6) An inspector may destroy or otherwise dispose of any sample taken under paragraph 2(b) where that sample is no longer required in connection with this Order.
- (7) An inspector entering premises by virtue of paragraph (1), or of a warrant granted under article 37, may take with him such other persons, including representatives of the European Commission, and such equipment and vehicles as he considers necessary, and any such other persons may, whether or not accompanied by the inspector and on production, if so requested, of their authority given in that behalf by the Commissioners, remain on and from time to time re-enter the premises with any equipment or vehicles that person considers necessary, and carry out such work in such manner as the inspector may direct.

Actions which may be required by an inspector

- 31.—**(1) If an inspector has reasonable grounds for suspecting that any tree pest or relevant material is likely to be, or has been landed in Great Britain in contravention of this Order he may serve a notice in writing in accordance with paragraphs (2) and (3).
- (2) An inspector may serve a notice under paragraph (1) on—
- (a) a forestry trader or other person who is in possession of or in any way entitled to the custody or control of the tree pest or relevant material which has been landed; or
 - (b) any person in charge of the premises from which any tree pest or relevant material is likely to be or has been landed.
- (3) A notice under paragraph (1) may—
- (a) prohibit the landing of any tree pest or relevant material;
 - (b) specify the manner in which the landing is to be carried out and the precautions which are to be taken during and subsequent to the landing;
 - (c) require any tree pest or relevant material to be treated, re-exported, destroyed or otherwise disposed of in such manner and within such reasonable time as may be specified in the notice;

- (d) prohibit the removal of any tree pest or relevant material from premises specified in the notice for such period as may be so specified and, where appropriate, impose such other prohibitions as appear to the inspector to be necessary to prevent the introduction or spread of any tree pest;
 - (e) require the removal of any tree pest or relevant material from premises specified in the notice in such manner and within such reasonable time as may be so specified;
 - (f) require the taking of such other steps, specified in the notice, as appear to the inspector to be necessary to prevent the introduction or spread of any tree pest in such a manner and within such reasonable time as may be specified in the notice.
- (4) If an inspector has reasonable grounds for suspecting that there is present or likely to be present on any premises any tree pest referred to in paragraph (5) or any relevant material referred to in paragraph (6), he may by notice in writing served on the occupier or other person in charge of the premises or such tree pest or relevant material—
- (a) require any tree pest or relevant material to be treated, destroyed or otherwise disposed of in such manner and within such reasonable time as may be specified in the notice;
 - (b) prohibit the removal of any tree pest or relevant material from premises specified in the notice for such period as may be so specified and, where appropriate, impose such other prohibitions as appear to the inspector to be necessary to prevent the spread of any tree pest;
 - (c) require the removal of any tree pest or relevant material to premises specified in the notice in such manner and within such reasonable time as may be so specified; or
 - (d) require the taking of such other steps, specified in the notice, as appear to the inspector to be necessary to prevent the spread of any tree pest in such manner and within such reasonable time as may be specified in the notice.
- (5) The tree pests referred to in paragraph (4) are—
- (a) a tree pest of a description specified in Schedule 1 or in column 3 of Schedule 2;
 - (b) any tree pest which is not normally present in Great Britain and in respect of which there is, in the opinion of the inspector, an imminent danger of its spreading or being spread in Great Britain; and
 - (c) any tree pest which is not normally present in another part of the European Community and in respect of which there is, in the opinion of the inspector, an imminent danger of its spreading or being spread to another part of the European Community.
- (6) The relevant material referred to in paragraph (4) is—
- (a) any relevant material which is carrying or is infected with, or which may be carrying or infected with, a tree pest referred to in paragraph (5); and
 - (b) any relevant material the landing of which in Great Britain is prohibited under article 5 or 18 or the movement of which in Great Britain is prohibited under article 19.
- (7) If an inspector has reasonable grounds for believing that it is necessary for the purpose of preventing the spread of or ensuring the eradication of any tree pest from the premises mentioned in paragraph (4), he may by notice in writing served on the occupier or other person in charge of any other premises impose such prohibitions and require the taking of such reasonable steps, specified in the notice, as appear to him to be necessary for that purpose, such steps to be taken in such manner and in such reasonable time as may be specified in the notice.

Actions which may be taken by an inspector

32.—(1) Without prejudice to article 31, and subject to article 37, if an inspector has reasonable grounds for suspecting that there is present or likely to be present on any premises any tree pest

referred to in paragraph (2) or any relevant material referred to in paragraph (3), he may, after giving the occupier or other person in charge of the premises reasonable notice of his intention and upon production if so required of his authority, enter such premises and either on those premises or elsewhere take steps—

- (a) to destroy any tree pest referred to in paragraph (2) and to prevent the spread of any such tree pest; or
 - (b) to destroy or treat any relevant material referred to in paragraph (3).
- (2) The tree pests referred to in paragraph (1) are—
- (a) a tree pest of a description specified in Schedule 1 or column 3 of Schedule 2; and
 - (b) any tree pest not normally present in Great Britain and in respect of which there is, in the opinion of the inspector, an imminent danger of its spreading or being spread in Great Britain.
- (3) The relevant material referred to in paragraph (1) is—
- (a) any relevant material which is carrying or is infected with, or which may be carrying or infected with, a tree pest referred to in paragraph (2); and
 - (b) any relevant material not carrying or infected with a tree pest referred to in paragraph (2) but in respect of which there is, in the opinion of the inspector, an imminent danger of such a tree pest spreading or being spread.

(4) An inspector on entering any premises under paragraph (1) may take with him such persons, including representatives of the European Commission, and such equipment and vehicles as he considers necessary for the purposes of facilitating the exercise of his powers under that paragraph.

(5) Any person whom an inspector takes with him on to premises in accordance with paragraph (4) may, whether or not accompanied by an inspector, upon production if so required of his authority given in that behalf by the Commissioners, remain on the premises and from time to time re-enter the premises with any equipment or vehicles that person considers necessary, and carry out such work in such manner as the inspector may direct.

Miscellaneous provisions as to notices

33.—(1) A notice served under paragraph (1) or (2) of article 31 may specify one or more requirements or alternative requirements.

(2) Any treatment, re-export, destruction or disposal required by a notice served under article 31 shall be carried out or arranged to be carried out by the person on whom the notice is served to the satisfaction of an inspector from or at a place designated by an inspector and, except with the written authority of an inspector, no tree pest or relevant material to which the notice relates shall be moved otherwise than directly from or to such a place.

(3) An inspector may amend or withdraw a notice served by an inspector under this Order by a further notice served on the person on whom the original notice was served or on the person who is the occupier or in charge of the premises in respect of which the further notice is intended to be served.

(4) A notice under paragraph (3) may be subject to such conditions, if any, as the inspector considers expedient to impose for the purpose of preventing the introduction or spread of any tree pest or re-infection or re-infestation by the tree pest to which the original notice relates.

(5) Any notice served under this Part may define by reference to a map or plan or otherwise the extent of the premises referred to in the notice.

(6) Where a notice is served under paragraph (2) or (4) of article 31 (“an article 31 notice”), an inspector may, either in that notice or in a separate notice served on the owner or on such other

person as appears to him to be in charge of the premises to which the article 31 notice relates, require the person on whom the notice is served to inform—

- (a) the Commissioners of any change in the occupation of the premises to which the article 31 notice relates together with the date of such change and the name of the new occupier; and
- (b) the new occupier of the premises of the contents of the article 31 notice.

Service of notices

34.—(1) Subject to paragraphs (2), (3) and (4), a notice under this Order may be served on any person—

- (a) by delivering it to him personally;
- (b) by leaving it for him at his last known place of abode or business; or
- (c) by sending it through the post addressed to him at his last known place of abode or business.

(2) Where a notice under this Order must be served on the occupier or other person in charge of premises, and the last known place of abode or business of that person cannot be ascertained after reasonable inquiry, the notice shall be taken to be served seven days after it has been addressed to “the occupier” and affixed conspicuously to an object on the premises to which the notice relates.

(3) Subject to paragraph (4), a notice served under this Order may—

- (a) in the case of a body corporate (other than a limited liability partnership), be served on 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 including a Scottish partnership (other than a limited liability partnership), be served on a partner or person having the control or management of the partnership business at the address of the principal office of the partnership; or
- (c) in the case of a limited liability partnership, be served on a member of the partnership at the address of the registered or principal office of that partnership,

and for the purposes of this paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be its principal office within the United Kingdom.

(4) In the case of a registered forestry trader a notice under this Order shall be served on the trader either by delivering it to him personally, or by leaving it for him, or sending it through the post addressed to him, at the address of his premises listed in the register or, if more than one such address is registered, any address specified by the trader as his principal address.

Information as to compliance with notices

35. A person on whom a notice has been served under this Order shall, if so required by an inspector, immediately inform the inspector whether the requirements of the notice have been complied with and, if they have been complied with, of the details of the steps taken in order to comply with those requirements.

Failure to comply with a notice

36.—(1) Subject to article 37, if any person fails to comply with a notice served under this Order then, without prejudice to any proceedings consequent upon such failure, an inspector may, on production if so required of his authority, at all reasonable times for the purposes of this Order enter any premises in which any tree pest or relevant material to which the notice relates may be present

and take or cause to be taken such steps as appear to him to be necessary either to ensure compliance with the requirements of the notice or to remedy the consequences of the failure to carry them out.

(2) An inspector entering any premises under paragraph (1) may take with him such other persons, including representatives of the European Commission, and such equipment and vehicles as he considers necessary for the purposes of facilitating the exercise of his powers under that paragraph, and such other persons whether or not accompanied by the inspector and on production, if so requested, of their authority given in that behalf by the Commissioners, may remain on the premises and from time to time re-enter the premises with any equipment or vehicles that person considers necessary, and carry out such work and in such manner as the inspector may direct.

(3) Where an inspector takes any steps pursuant to paragraph (1), the Commissioners may recover all reasonable costs of taking such steps as a debt from the person on whom the notice was served.

Power to enter premises used wholly or mainly as a dwelling

37.—(1) The power to enter premises conferred by articles 30, 32 and 36 may be exercised by an inspector to enter premises used wholly or mainly as a dwelling only if he has been granted a warrant by—

- (a) in England and Wales, a justice of the peace; or
- (b) in Scotland, a sheriff or a justice of the peace.

(2) A justice of the peace or sheriff may grant a warrant under paragraph (1) only if he is satisfied—

- (a) that admission to any premises 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 under article 30, 32 or 36 as the case may be.

(3) A warrant granted under paragraph (1) 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.

PART 7

LICENCES

Licences to carry out activities prohibited by this Order

38. Notwithstanding any of the provisions of this Order, any tree pest or relevant material may be landed, kept, stored, sold, planted, moved or otherwise disposed of in Great Britain and any other thing prohibited by this Order may be done under the authority of a licence, whether general or specific, granted by the Commissioners in exercise of any derogation permitted by the Directive.

Licences for trial or scientific purposes and for work on varietal selections

39.—(1) On receipt of an application for a licence containing the information set out in article 1(2) of Directive **95/44/EC(26)** and on being satisfied that the general conditions set out in Annex I to that Directive are fulfilled, the Commissioners shall by licence authorise the landing, movement and keeping of any tree pest or relevant material for activities for trial or scientific purposes or for

(26) OJ No. L 184, 3.8.1995, p.34.

work on varietal selections where such landing, movement or keeping would otherwise be prohibited by this Order.

(2) A licence granted under paragraph (1) shall be subject to—

- (a) the conditions laid down in article 2(2) of Directive 95/44/EC to the extent that they are relevant to any tree pest or relevant material that is the subject of the activities to which the licence relates;
- (b) such conditions specifying quarantine measures under paragraph 2(a) of Annex I to Directive 95/44/EC as the Commissioners may determine; and
- (c) such conditions specifying further quarantine measures under paragraph 2(b) of Annex I to Directive 95/44/EC as the Commissioners may determine.

(3) Where it is established to their satisfaction that the licensee has not fulfilled any condition under sub-paragraph (b) or (c) of paragraph (2) imposed on a licence, the Commissioners shall revoke the licence.

(4) At the conclusion of any activities to which a licence granted under paragraph (1) relates the licensee shall—

- (a) subject to paragraph (5), destroy or sterilise any tree pest or relevant material that was the subject of the activities and any other relevant material which has come into contact with or which may have been contaminated by any such tree pest or relevant material; and
- (b) sterilise, or clean in such other manner as may be specified by the Commissioners, the premises and facilities at which the activities were undertaken.

(5) The Commissioners may authorise the licensee to refrain from destroying any relevant material under paragraph 4(a) if they are satisfied that it has been subjected to appropriate quarantine measures and that it has been found by testing in such manner as may be specified by the Commissioners to be free from the tree pests listed in this Order and from other tree pests considered by them to pose a risk.

(6) For the purpose of paragraph (2), references to the responsible official body in article 2(2) of, and Annex I to, Directive 95/44/EC shall be taken to refer to the Commissioners.

(7) In this article—

- (a) “appropriate quarantine measures” means such quarantine measures as may be specified by the Commissioners; and
- (b) “Directive 95/44/EC” means Commission Directive 95/44/EC(27) establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V of Council Directive 77/93/EEC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections.

PART 8

NOTIFICATIONS, PROVISION AND EXCHANGE OF INFORMATION

Notification of the presence or suspected presence of certain tree pests

40.—(1) The occupier or other person in charge of premises who knows or suspects that any tree pest to which this article applies is present on the premises, or any other person who, in the course of his duties or business, becomes aware or suspicious of the presence of such tree pest on any premises, shall immediately give notice to the Commissioners or an inspector of the presence

(27) OJ No. L 184, 3.8.1995, p.34.

or suspected presence of such tree pest and shall as soon as reasonably practicable after giving such notice confirm it in writing.

- (2) This article applies to any tree pest—
- (a) which is of a description specified in Schedule 1 or in column 3 of Schedule 2; or
 - (b) which, although not specified in Schedule 1 or 2, is not normally present in Great Britain and which is likely to be injurious to trees in Great Britain.

Notification of the likely entry into, or presence in, a free zone of tree pests or relevant material

41.—(1) The responsible authority for a free zone who knows or suspects that any of the things to which this article applies is likely to enter, or is present in, such a free zone, shall immediately give notice of that fact to the Commissioners or an inspector and shall as soon as reasonably practicable after giving such notice confirm it in writing.

- (2) This article applies to—
- (a) any tree pest which is of a description specified in Schedule 1 or in column 3 of Schedule 2;
 - (b) any tree pest which, although not specified in Schedule 1 or 2, is not normally present in Great Britain and which is likely to be injurious to trees in Great Britain; and
 - (c) any relevant material of a description specified in column 2 of Schedule 3 which originates in a country specified in column 3 of that Schedule opposite the reference to that relevant material,

which has been, or is likely to be, landed in Great Britain, and has not been cleared out of charge under the Customs Act.

(3) In this article “the responsible authority” and “free zone” have the same meaning as in the Customs Act(28).

Information to be given

42.—(1) An inspector or any other officer of the Commissioners may by notice in writing require any person referred to in paragraph (2) to give the inspector or officer within such reasonable time as may be specified in that notice any information referred to in paragraph (3).

- (2) A person to which paragraph (1) refers is any person who—
- (a) is the owner or occupier or other person in charge of premises in respect of which a notice has been served under this Order;
 - (b) has or has had or is reasonably suspected by an inspector or other officer of the Commissioners to have or have had in his possession or under his charge—
 - (i) any tree pest which is of a description specified in Schedule 1 or in column 3 of Schedule 2;
 - (ii) any tree pest which, although not specified in Schedule 1 or 2 is not normally present in Great Britain and which is likely to be injurious to trees in Great Britain;
 - (iii) any relevant material carrying or infected with a tree pest mentioned in subparagraph (i) or (ii); or
 - (iv) any relevant material which an inspector or any other officer of the Commissioners knows to have been landed or suspects has been landed in, or exported from, Great Britain; or

(28) See section 100A of the Customs Act which was inserted by the Finance Act 1984 (c. 43), section 8 and Schedule 4, Part 1.

- (c) as auctioneer, salesman or otherwise, has sold, offered for sale or otherwise disposed of any tree pest or relevant material mentioned in sub-paragraph (b).
- (3) The information referred to in paragraph (1) is any information that a person referred to in paragraph (2) may possess—
 - (a) as to trees grown or products stored at any time on the premises referred to in paragraph (2) (a);
 - (b) as to any tree pest or relevant material referred to in paragraph (2)(b); and
 - (c) as to the persons who have had or are likely to have had any tree pest or relevant material referred to in paragraph (2)(b) in their possession or under their charge.
- (4) A person who is required to give an inspector or other officer any information under paragraph (1) shall produce for examination by that inspector or other officer any licences, official statements, certificates, plant passports, records, invoices or other documents relating to any tree pest or relevant material to which that information relates.

PART 9 OFFENCES

Offences

- 43.—**(1) A person shall be guilty of an offence if without reasonable excuse, proof of which shall lie with him—
- (a) subject to paragraph (2), he contravenes or fails to comply with—
 - (i) article 6(1);
 - (ii) article 9;
 - (iii) article 10(1) or (4);
 - (iv) article 16(2) or (3);
 - (v) article 19(1);
 - (vi) article 20;
 - (vii) article 23(3) or (4);
 - (viii) article 25(1);
 - (ix) article 26(2) or (3);
 - (x) article 27(1);
 - (xi) article 35;
 - (xii) article 39(4);
 - (xiii) article 40(1); and
 - (xiv) article 41(1);
 - (b) he contravenes or fails to comply with a provision or condition of a notice served, or licence granted or of any direction given, under this Order; or
 - (c) he intentionally obstructs an inspector or any person authorised by an inspector in exercise of his powers given by or under this Order.

(2) Paragraph 1(a) shall not apply where an article of any description is landed in Great Britain in contravention of a prohibition in this Order(29), other than the prohibition in article 6(1).

(3) A person shall be guilty of an offence if, for the purpose of procuring the issue of a plant passport or a replacement plant passport, a phytosanitary certificate, a phytosanitary certificate for re-export or a licence under this Order, he—

- (a) knowingly or recklessly makes a statement which is false in a material particular, or
- (b) intentionally fails to disclose any material information.

(4) A person shall be guilty of an offence if he—

- (a) dishonestly issues a plant passport; or
- (b) dishonestly alters a plant passport, or re-uses a plant passport.

(5) Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

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

he, as well as the body corporate, shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(6) For the purposes of paragraph (5), “director” in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(7) Where an offence under this Order is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of, a partner, he, as well as the partnership, shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(8) Where the commission by any person of an offence under this Order is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings for the offence are taken against the first-mentioned person.

Penalties

44. A person guilty of an offence under this Order shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 10

THE CUSTOMS ACT AND REVOCATION

The Customs Act

45. The provisions of this Order shall apply without prejudice to the Customs Act.

Revocation

46. The Orders specified in Schedule 14 are revoked.

(29) Sections 49 and 50 of the Customs and Excise Management Act 1979 (c. 2) provide respectively for forfeiture of goods improperly imported and penalties for improper importation of goods.

The official Seal of the Forestry Commissioners 6th September 2005

Wilma Harper
Secretary to the Forestry Commissioners