

2017 No. 178

PLANT HEALTH, ENGLAND

The Plant Health (Sweet Chestnut Blight) (England) Order 2017

Made - - - - *20th February 2017*

Laid before Parliament *11.30 a.m. on 21st February 2017*

Coming into force - - *4.00 p.m. on 21st February 2017*

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

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Plant Health (Sweet Chestnut Blight) (England) Order 2017 and comes into force at 4.00 p.m. on 21st February 2017.

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

Interpretation

2.—(1) In this Order—

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

“the 2015 Order” means the Plant Health (England) Order 2015(d);

“competent authorities” means the Secretary of State and the Forestry Commissioners;

“inspector” means any person authorised—

(a) by the Secretary of State to be an inspector for the purposes of the 2015 Order;

(b) by the Forestry Commissioners to be an inspector for the purposes of the 2005 Order;

“premises” has the same meaning as in the 2005 Order and the 2015 Order;

“susceptible material” means—

(a) any plants for planting, other than seeds;

(a) 1967 c.8; section 3(1) was amended by paragraph 8 of Schedule 4 to the European Communities Act 1972 (c.68) and S.I. 2011/1043. Section 3(2) was amended by paragraph 8 of Schedule 4 to the European Communities Act 1972. Section 3(4) was substituted by section 42 of the Criminal Justice Act 1982 (c.48) and amended by Part 14 of Schedule 1 to the Statute Law (Repeals) Act 1993 (c.50). Section 4(1) was amended by paragraph 8 of Schedule 4 to the European Communities Act 1972. The powers conferred by section 3 are conferred on a “competent authority”, which is defined in section 1(2). Section 1(2) provides that the Forestry Commissioners are the competent authority for England as regards the protection of forest trees and timber from attack by pests and the Secretary of State is the competent authority otherwise for England.

(b) The functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967, in so far as they were not exercisable in relation to Wales, were transferred to the Secretary of State by article 2(2) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

(c) S.I. 2005/2517, as amended by S.I. 2013/755; there are other relevant amending instruments, but none is relevant.

(d) S.I. 2015/610, to which there are amendments not relevant to this Order.

(b) any trees, other than fruit, seeds, leaves or foliage; or

(c) any wood or isolated bark;

“sweet chestnut blight” means the fungal disease caused by the fungus *Cryphonectria parasitica* (Murrill) Barr or that fungus.

(2) For the purposes of paragraph (1)—

“isolated bark” has the same meaning as in the 2005 Order;

“plant” has the same meaning as in the 2015 Order;

“planting” has the same meaning as in Article 2(1)(c) of Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community^(a);

“tree” has the same meaning as in the 2005 Order;

“wood” means any wood, other than in the form of wood packaging material or dunnage, which—

(a) retains part or all of its natural round surface (with or without bark); or

(b) is in the form of chips, waste wood, logs, billets, twigs, faggots or other similar forms.

Demarcated areas

3.—(1) Where an inspector has confirmed the presence of sweet chestnut blight on any premises, the competent authorities may, by notice, demarcate an area in relation to the infestation.

(2) An area demarcated under paragraph (1) must be of such size as the competent authorities consider appropriate to reduce the risk of spread of sweet chestnut blight, taking into account—

(a) scientific and technical evidence and principles;

(b) the biology of sweet chestnut blight;

(c) the presence and biology of susceptible material of *Castanea sativa* and *Quercus* L.;

(d) other appropriate information concerning the presence or possible presence of sweet chestnut blight.

(3) A notice under paragraph (1)—

(a) must be in writing,

(b) must describe the extent of—

(i) the demarcated area,

(ii) the area which is to be treated as the infested area, and

(iii) any area which is to be treated as the controlled area,

(c) must specify the date on which the prohibitions in article 4(2) are to commence,

(d) must be published in a manner appropriate to bring it to the attention of the public, and

(e) may be amended or revoked, in whole or in part, by further notice.

(4) Any premises which are partly within the infested area are to be treated as being within the infested area and any premises which are partly within any controlled area and not within the infested area are to be treated as being within the controlled area.

Prohibition on the movement of susceptible material

4.—(1) This article applies where a notice of a demarcated area is issued under article 3(1).

(a) OJ No L 169, 10.7.2000, p. 1, as last amended by Regulation (EU) 652/2014 (OJ No L 189, 27.6.2014, p. 1). It has been repealed (with savings) by Regulation (EU) 2016/2031 (OJ No L 317, 23.11.2016, p. 4), to apply from 14th December 2019.

- (2) No person may move—
- (a) any susceptible material of *Castanea sativa* or *Quercus* L. out of or within the infested area specified in the notice, or
 - (b) any susceptible material of *Castanea sativa* out of or within any controlled area specified in the notice,

without the written authority of an inspector.

(3) The prohibitions in paragraph (2) apply on or after the date specified in the notice and cease to apply on the date on which the notice is revoked or otherwise ceases to have effect.

- (4) Paragraph (2) does not apply to the movement of—
- (a) any susceptible material of *Quercus* L. which enters and exits the infested area without stopping;
 - (b) any susceptible material of *Castanea sativa* which enters and exits the infested area or any controlled area without stopping;
 - (c) any susceptible material of *Castanea sativa* or *Quercus* L. which is authorised by a notice issued by an inspector under the 2005 Order or the 2015 Order before the date on which the prohibitions in paragraph (2) commence;
 - (d) any susceptible material of *Castanea sativa* or *Quercus* L. authorised by a licence granted by the Secretary of State under the 2015 Order or by the Forestry Commissioners under the 2005 Order.

Powers of inspectors

5.—(1) Where an inspector has reasonable grounds for suspecting that there is present on any premises any susceptible material of *Quercus* L. or *Castanea sativa* that is being moved or has been moved in contravention of article 4(2), the inspector may enter and inspect those premises and, if the inspector considers it necessary, seize any such material found on the premises.

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

(3) Paragraph (1) does not apply in relation to any premises which are used wholly or mainly as a private dwelling, unless 24 hours' notice has been given to the occupier or the inspector has been granted a warrant by a justice of peace.

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

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

(5) The conditions are that—

- (a) entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant has been given to the occupier;
- (b) asking for admission to the premises, or giving notice of the intention to apply for a warrant, would defeat the object of the entry;
- (c) entry is required urgently;
- (d) the premises are unoccupied or the occupier is temporarily absent.

(6) A warrant is valid for one month.

(7) An inspector who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

Offences

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

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

(2) If an offence under this Order is proved to have been committed with the consent or connivance of, or to have been attributable to the 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,

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

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

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

Review

7.—(1) The competent authorities must from time to time—

- (a) carry out a review of the regulatory provision contained in this Order, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 21st February 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(a) requires that a report published under this article must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this article, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

20th February 2017

Gardiner of Kimble
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

20th February 2017

Stephen Bennett
Secretary to the Forestry Commissioners

EXPLANATORY NOTE

(This note is not part of the Order)

This Order introduces specific measures for the control in England of the harmful organism *Cryphonectria parasitica* (Murrill) Barr, a fungal disease causing sweet chestnut blight.

(a) 2015 c.26.

Article 3 makes provision for the Secretary of State and the Forestry Commissioners to demarcate an area in relation to an infestation of sweet chestnut blight following the confirmation of the presence of the disease on any premises.

Article 4 prohibits certain movements of susceptible material of *Castanea sativa* (sweet chestnut) and *Quercus L.* (oak), without the written authority of a plant health inspector. The prohibition on the movement out of or within the infested area of a demarcated area applies to susceptible material of *Castanea sativa* and *Quercus L.* The prohibition on the movement out of or within any controlled area of a demarcated area applies to susceptible material of *Castanea sativa*.

Article 5 contains provisions relating to inspection and enforcement.

Article 6 sets out the offences for contravening this Order. A person guilty of an offence under the Order is liable on summary conviction to a fine.

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