

Island of  Guernsey

Ordinance of the States **X**

1981

Made	29th April, 1981.
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**The Elms and Dutch Elm Disease
(Temporary Provisions) Ordinance, 1981**

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The Elms and Dutch Elm Disease (Temporary Provisions) Ordinance, 1981

THE STATES, in pursuance of their Resolution of the twenty-ninth day of April, nineteen hundred and eighty-one, hereby order:—

PART I

Provisions relating to Elms

1. (1) Subject to the provisions of section four of this Ordinance, a person shall not cut down any elm on any land in this Island, or lop or cut off or otherwise detach any part thereof, or destroy or remove from the land on which it is situate, any elm or any part thereof, without the permission in writing of the Committee and otherwise than under and in accordance with such permission.

Prohibition on the felling, lopping, destruction or removal of elms without permission.

(2) Subject to the provisions of section thirteen of this Ordinance, any permission granted under the provisions of the last preceding subsection may be subject to the condition that anything authorised to be done under the permission shall be carried out by an authorised officer and that the elm and all parts of any elm which are found situate on the land, whether or not in consequence of anything done in accordance with the said permission, shall be removed from the land by an authorised officer for the purpose of destruction by fire at such place and in such manner as shall be specified by the Inspector and to his satisfaction.

(3) Nothing in the last preceding subsection contained shall be taken to preclude the Committee from imposing such other conditions on the grant of any permission under the provisions of subsection (1) of this section as the Committee may deem necessary or expedient.

Obligations of occupiers of land as regards elms which have died or fallen.

2. (1) Subject to the provisions of section four of this Ordinance, where any elm growing on any land in this Island shall die, or any elm, whether alive or dead, growing or standing on any land in this Island shall fall, the occupier of that land shall notify the Committee in writing of the death or falling of the elm, as the case may be, within the seven days of becoming aware of such event and the said occupier shall not take, or cause or permit any other person to take any action whatsoever as regards the cutting down, lopping or cutting off, or otherwise detaching of any part thereof, destruction or removal from the land on which it is situate, of the elm or any part thereof, without the direction of the Committee under the provisions of the next succeeding section and otherwise than under and in accordance with such direction.

(2) The provisions of the last preceding subsection shall apply to the occupier of any land on which any elm or any part thereof shall fall in like manner as they apply to the occupier of the land on which the elm was growing or standing before its falling.

Action of the Committee where notice is given of elms having died or fallen.

3. (1) Where the Committee is notified under the provisions of the last preceding section of the death or falling of any elm, as the case may be, the Committee may, subject to the provisions of section thirteen of this Ordinance, direct in writing an authorised officer to enter on the land concerned and to do all such things as are reasonable to ensure that any elm to which the notification relates and all parts of any elm which are found situate on the land, whether or not in consequence of anything done in accordance with the direction, are cut down, lopped or cut off or otherwise detached from any part thereof and removed from the land by an authorised officer for the purpose of destruction by

fire at such place and in such manner as shall be specified by the Inspector and to his satisfaction:

Provided that where an authorised officer is directed as aforesaid, the Committee shall, before anything is done under the direction, serve on the person who made the notification a notice in writing setting out the terms of the direction and that person shall be under an obligation to allow an authorised officer to enter upon the land to do all the things specified in the direction.

(2) Nothing in the last preceding subsection contained shall be taken to preclude the Committee from directing the doing of such other things as shall be specified in the direction as the Committee may deem necessary or expedient.

4. Nothing in sections one or two of this Ordinance contained shall be taken to prohibit any person from taking such reasonable action as regards the cutting down, lopping or cutting off or otherwise detaching of any part thereof, of any elm or any part thereof in any case of urgency where the elm or any such part has presently become dangerous or by its falling is causing an obstruction to any highway:

Exemption
from
certain
provisions of
sections 1
and 2.

Provided that notice giving particulars of the urgent danger or obstruction, as the case may be, and of the action taken are, as soon as may be, given to the Committee and such notification shall, for the purposes of any action which the Committee is empowered to take under the provisions of the said section one or section three of this Ordinance, be deemed to be a request for permission to cut off or lop or cut down or otherwise detach any part thereof or a notice of the falling, as the case may be, given pursuant to the provisions of the said

sections one or three, and a person shall not take any further action as regards the cutting down, lopping or cutting off or otherwise detaching of any part thereof, destruction or removal from the land on which it is situate, of the elm or any part thereof otherwise than under and in accordance with the permission or the direction of the Committee, as the case may be.

PART II

Provisions relating to Dutch Elm Disease

Powers of entry on land under this Part.

5. The Inspector, on production of his authority if so required, may, at all reasonable times, enter on any land upon which he has reason to believe that any elm is infected with the disease and may examine, by removing bark, cutting into or otherwise, any elm on that land and may mark any such elm as appears to him to be infected with the disease and, for the purposes of such examination, may cut off or otherwise detach and remove from that land any part of any such elm.

Action of the Committee where the disease is found.

6. Where, as a result of an examination carried out under the provisions of the last preceding section, any elm or any part thereof is found to be infected with the disease, the Committee shall, subject to the provisions of section thirteen of this Ordinance, direct an authorised officer to enter on the land on which the elm is situate and to do one or more of the following things, namely:—

- (a) to cut down as near as possible to ground level any elm so infected as shall be specified in the direction;
- (b) to lop or cut off or otherwise detach such parts of any elm so infected as shall be specified in the direction;

- (c) to remove from the land any elm so infected as shall be specified in the direction and all parts of any elm which are found situate on the land, whether or not in consequence of anything done in accordance with the direction, for the purpose of destruction by fire at such place and in such manner as shall be specified by the Inspector and to his satisfaction;
- (d) to take such other steps as are reasonable for the prevention of the spread of the disease as shall be specified by the Inspector and to his satisfaction:

Provided that where an authorised officer is directed as aforesaid, the Committee shall, before anything is done under the direction, serve on the occupier of the land on which the elm so infected is situate or on any person in whose control or management the elm appears to be a notice in writing setting out the terms of the direction and that person shall be under an obligation to allow an authorised officer to enter upon the land and to do all the things specified in the direction and that person shall not take, or cause or permit any other person to take, any action whatsoever as regards the cutting down, lopping or cutting off or otherwise detaching of any part thereof, destruction or removal from the land on which it is situate, of the elm or any part thereof, otherwise than under and in accordance with such direction.

PART III

General and supplemental provisions

7. (1) The Inspector, on production of his authority if so required, may at all reasonable times, enter on any land and examine any elm or any part thereof for the purpose of ascertaining whether there is or

Supple-
mental
provisions
relating to
entry on
land.

has been any contravention of, or failure to comply with, any provisions of this Ordinance, or any condition imposed on the grant of any permission or any terms of any direction given thereunder.

(2) The Inspector and an authorised officer entering on any land for the purpose of executing any of his powers or duties under any of the provisions of this Ordinance may be accompanied by such other persons acting under his instructions and such equipment as appears to him to be necessary, and such other persons, whether or not accompanied by the Inspector or an authorised officer, may remain on the land and do such things for the purpose aforesaid as he may direct and may, from time to time, re-enter on the land with such equipment as aforesaid for the purpose of doing the said things.

Expense and risk relating to acts done and ownership of elms removed.

8. Any act done by an authorised officer for the purpose of executing any of his duties under the provisions of sections one, three or six of this Ordinance shall be at the expense and at the risk of the States and, subject to the provisions of section thirteen of this Ordinance, the ownership in any elm or any part thereof removed from any land by an authorised officer shall, where the ownership thereof is not already vested in the States, vest in the States at the time it is so removed from the said land.

Powers of the Committee on failure to comply with the provisions of this Ordinance or with any permission granted or direction given thereunder.

9. (1) If any person—

- (a) does any act in contravention of any of the provisions of this Ordinance or of the conditions of any permission granted or of the terms of any direction given thereunder;
- or
- (b) fails to notify the Committee as required under any of the provisions of this Ordinance;

then, without prejudice to any proceedings consequent upon such action or failure, the Committee may direct in writing an authorised officer to enter on any land on which the Committee has reason to believe that any elm or any part thereof, to which the provisions of paragraphs (a) or (b) of this subsection apply, is situate and to do all such things as are reasonable to ensure that any such elm and all parts thereof which are found situate on any such land, whether or not in consequence of anything done in accordance with the direction, are cut down, lopped, cut off or otherwise detached from any part thereof and removed from the land by an authorised officer for the purpose of destruction by fire at such place and in such manner as shall be specified by the Inspector and to his satisfaction and the cost of taking such action shall be recoverable by the States from the occupier of the land on which the elm or any part thereof is situate or from the person in whose control or management the elm or any part thereof appears to be, as the case may be, as a civil debt:

Provided that where an authorised officer is directed as aforesaid, the Committee shall, before anything is done under the direction, serve on the person concerned as aforesaid, a notice in writing setting out the terms of the direction and that person shall be under an obligation to allow an authorised officer to enter upon the land and to do all the things specified in the direction at that person's expense.

(2) Nothing in the last preceding subsection contained shall be taken to preclude the Committee from directing the doing of such other things as shall be specified in the direction as the Committee may deem necessary or expedient.

Service of notices.

10. Any notice which may be served for the purposes of this Ordinance shall be validly served—

- (a) on any person, if delivered to him, left, or sent by registered post or by recorded delivery service to him, at his usual or last known place of abode;
- (b) on any firm, if delivered to any partner of the firm or left at, or sent by registered post or by recorded delivery service to, the principal or last known principal place of business of the firm;
- (c) on any body corporate, if left at, or sent by registered post or by recorded delivery service to, its registered office if situate in this Island or, if its registered office is not so situate, its principal or last known principal place of business in this Island.

Offences.

11. If any person—

- (a) does any act in contravention of any of the provisions of this Ordinance or of the conditions of any permission granted or of the terms of any direction given thereunder; or
- (b) knowingly fails to notify the Committee as required under any of the provisions of this Ordinance; or
- (c) wilfully obstructs the Inspector or any authorised officer in the exercise of any of their powers or duties under any of the provisions of this Ordinance;

he shall be guilty of an offence and liable, on conviction, to a fine not exceeding five hundred pounds.

12. Where an offence under this Ordinance which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Offences by
bodies
corporate.

13. (1) Where, as regards any elm or any part thereof which is required to be destroyed by fire under any of the provisions of this Ordinance, the Inspector is satisfied that the wood thereof is capable of being used without any risk of the spread of the disease, the Committee may, in lieu of requiring the destruction thereof, authorise that such steps be taken as shall be specified by the Inspector and to his satisfaction to ensure that the wood is rendered free from any risk of the spread of the disease, and in that event when the wood or such part thereof as is capable of being so rendered, has been rendered free from any risk of the spread of the disease, the wood or that part thereof may thereafter be used for any purpose.

Salvage of
wood.

(2) Where, before any elm or any part thereof is removed from any land on which it is situate by an authorised officer under the provisions of sections one, three or six of this Ordinance, the owner or the occupier of that land requests the Committee that the wood thereof be not destroyed but returned to him, and where the Inspector is satisfied that the said wood is capable of being used without any risk of the spread of the disease, the Committee shall, in lieu of requiring the destruction thereof, authorise that such steps be taken as shall be specified by

the Inspector and to his satisfaction to ensure that the wood is rendered free from any risk of the spread of the disease at the expense of that person, and in that event the ownership of the elm shall not vest in the States under the provisions of section eight of this Ordinance and when the wood or such part thereof as is capable of being so rendered, has been rendered free from any risk of the spread of the disease, the wood or that part thereof may thereafter be used for any purpose and shall be returned by the Committee to that person:

Provided that any wood rendered free from any risk of the spread of the disease as aforesaid shall not be returned by the Committee to any person until that person has paid to the States Treasurer the full cost incurred by the States in the action taken under the provision of this subsection and in the transport thereof and that where payment as aforesaid is not made within the period of the two months of being demanded by the Committee the wood shall, at the expiration of the said period of two months, forfeit to the States and the ownership thereof shall thereupon vest in the States.

(3) Where, in the case of any permission granted under the provisions of subsection (1) of section one of this Ordinance or of any notice required to be served under the provisions of the proviso to subsection (1) of section three or the proviso to section six of this Ordinance, the Committee is satisfied as regards any elm or any part thereof required to be removed from any land that there is no likelihood of the risk of the spread of the disease, the Committee shall, in such permission or notice, include a notification stating the right of either the owner or the occupier of the land concerned to have the wood thereof salvaged by the Committee and returned to such person at his expense under and in

accordance with the provisions of the last preceding subsection, and without prejudice to the discharge of any of his other duties under any direction of the Committee, an authorised officer shall not, except with the consent of such person, remove any such elm or any part thereof from the land concerned before the expiration of the period of three days from the date of the service of the permission or notice, as the case may be, on such person.

14. (1) Where the Committee grants any permission or gives any direction or serves any notice under any of the provisions of this Ordinance, such permission, direction or notice shall be granted, given or served, as soon as may be and in any case not later than within the period of fourteen days next following either the date of the receipt of the application by the Committee or the date of the submission of the report of the Inspector to the Committee giving rise to the making of the direction or the service of the notice, as the case may be.

Action of the Committee and authorised officer to be taken within prescribed time.

(2) Subject to the proviso to subsection (1) of section three, the proviso to section six and the proviso to section nine of this Ordinance, where an authorised officer is directed by the Committee to do any thing under any of the provisions of this Ordinance, such thing shall be done as soon as may be and in any case not later than within the period of fourteen days next following the date of the direction.

(3) Where as regards any direction given or notice served under any of the provisions of this Ordinance, the requirements of subsection (1) of this section are not complied with by the Committee, such direction or notice, as the case may be, shall be deemed to be null and void but without

prejudice to anything done thereunder or to the giving of any new direction or to the service of any new notice.

Interpreta-
tion.

15. (1) In this Ordinance, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“authorised officer” means a person authorised by the Committee in writing to act in any matter for the purposes of this Ordinance and includes the Inspector, and for the purposes of subsection (2) of section seven of this Ordinance, includes such other persons acting under the instructions of an authorised officer;

“the Committee” means the States Committee for Horticulture;

“direction” means the direction in writing given by the Committee under the provisions of section three or section six or section nine of this Ordinance, as the case may be;

“the disease” means the disease in elm caused by the fungus *Ceratocystis ulmi* and commonly known as Dutch Elm Disease.

“elm” means any tree of the *genus Ulmus* and, except where the context otherwise requires, includes any elm which has been felled and any part thereof;

“the Inspector” means the States Plant Health Inspector for the time being appointed by the States Civil Service Board and includes a person authorised in writing by the Committee to execute and perform the powers and duties of the Inspector under the provisions of this Ordinance;

“this Island” means the Island of Guernsey and includes the Islands of Herm and Jethou;

“owner”, when used in relation to any land on which any elm is situate, includes any person having the right or holding himself out as having the right to the ownership of that elm, and in this definition the expression “ownership” shall be construed accordingly;

“wood”, in relation to any elm or any part thereof, means timber, logs or poles in respect of which all the bark thereof has been removed.

(2) Any reference in this Ordinance to any other enactment shall, except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced, extended or applied by or under any other enactment including this Ordinance.

16. The provisions of this Ordinance shall not in **Savings.** any way affect the operation of any enactment for the time being in force relating to the felling or lopping of trees and the provisions of this Ordinance shall be in addition to, and not in derogation of, the provisions of any such other enactment.

17. The Elm Trees (Temporary Provisions) Ordinance, 1979(*a*), and the Elm Trees (Temporary Provisions) (Amendment) Ordinance, 1981(*b*), are hereby **Repeals.** repealed.

18. This Ordinance shall apply to the Islands of **Extent.** Guernsey, Herm and Jethou.

(*a*) No. VIII of 1979.

(*b*) No. I of 1981.

- Citation.** 19. This Ordinance may be cited as the Elms and Dutch Elm Disease (Temporary Provisions) Ordinance, 1981.
- Duration.** 20. This Ordinance shall cease to have effect on the first day of May, nineteen hundred and eighty-six.

R. H. VIDELO,
Her Majesty's Greffier.

Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey.

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