

# ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

## **The Tree Pests Ordinance, 1982** \*

[CONSOLIDATED TEXT]

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* Recueil d'Ordonnances Tome XXII, p. 209; as amended by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). This Ordinance has been repealed by the Plant Health (Enabling Provisions) (Guernsey) Law, 2014 (No. X of 2014).

# ORDINANCE OF THE STATES OF DELIBERATION

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## **The Tree Pests Ordinance, 1982**

### ARRANGEMENT OF SECTIONS

1. Interpretation.
2. Prohibitions relating to non-indigenous tree-pests and genetic manipulation.
3. Examination, sampling and marking.
5. Remedial and precautionary measures.
6. Persons accompanying the Inspector.
7. Information to be given.
8. Service notices.
9. Offences.
10. Offences by bodies corporate.
11. Extent.
12. Citation.

*(Made on 29th September, 1982.)*

## **The Tree Pests Ordinance, 1982**

**THE STATES**, in pursuance of their Resolution of the thirtieth day of June, nineteen hundred and eighty-two, hereby order: –

### **Interpretation.**

1. (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 –

**"the Committee"** means the States [Committee for Economic Development],

**"the Court"** means the Magistrate's Court constituted under the Magistrate's Court (Guernsey) Law, 1954<sup>a</sup>,

**"genetically manipulated material"** means material derived from any activity which has involved genetic manipulation and which is in the opinion of the Committee likely to result in the production of a tree pest,

**"genetic manipulation"** means the formation of new combinations of heritable material by the insertion of nucleic acid molecules, produced by whatever means outside the cell, into any virus, bacterial plasmid, or other vector system so as to allow their incorporation into a host organism in which they do not naturally occur but in which they are capable of continued propagation,

**"the Inspector"** means the States Plant Health Inspector for the time being appointed by the States [Policy & Resources Committee] and includes a person authorised by the Committee to execute and perform the powers and duties of the Inspector under the provisions of this Ordinance,

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<sup>a</sup> Ordres en Conseil Vol. XVI, p. 103.

**"this Island"** includes the Islands of Herm and Jethou,

**"non-indigenous tree pest"** means a tree pest which in the opinion of the Committee is not established in this Island and includes *Ceratocystis ulmi* (Buism.), the cause of Dutch Elm Disease,

**"plant"** includes any tree or bush and means a living plant or living part of a plant, any tissue culture of such plant or living part of such plant, raw fruit or seed and includes where the context so admits any soil or other growing medium, packing material or container associated therewith,

**"premises"** includes any land, building, vehicle, vessel, aircraft, hovercraft, or freight container,

**"tree pest"** means a living organism, other than a vertebrate animal, or a pathogen, which is injurious to any tree or the wood thereof of a genus or species some or all of the forms or varieties of which are grown in this Island for the production of wood, and includes a culture of such organism or pathogen,

**"raw fruit"** does not include dried, dehydrated or deep-frozen fruit, and the expression **"raw"** in relation to fruit of any particular description shall be construed accordingly,

**"tree"** means a living tree or any living part thereof at any stage of its growth, including any tissue culture of such tree or living part of such tree or any raw fruit or seed of a tree, of a genus or species some or all of the forms or varieties of which are grown in any of the British Islands for the production of wood and includes, where the context so admits, any soil or other growing medium, packing material or container associated therewith,

**"wood"** means all wood of trees whether living or not including the bark thereof.

(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.

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**NOTES**

*In section 1,*

*the words in square brackets in the definition of the expression "the Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016;<sup>1</sup>*

*the words in square brackets in the definition of the expression "the Inspector" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.<sup>2</sup>*

*The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.<sup>3</sup>*

*The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.<sup>4</sup>*

*The Magistrate's Court (Guernsey) Law, 1954 has since been repealed by the Magistrate's Court (Guernsey) Law, 2008, section 46(b), with effect from 1st September, 2009, subject to the savings and transitional provisions in section 47 of the 2008 Law.*

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**Prohibitions relating to non-indigenous tree-pests and genetic manipulation.**

2. (1) Except under and in accordance with the terms of a licence granted by the Committee under this section, a person shall not –

- (a) knowingly keep, or release, deliver or otherwise dispose of, or cause to be kept, or released, delivered or otherwise disposed of –

- (i) any non-indigenous tree pest or any plant or wood carrying or infected with any such pest, or
  - (ii) any tree pest which has been subjected to genetic manipulation or any genetically manipulated material,
- (b) engage in any activity involving genetic manipulation of a tree pest or engage in any activity which involves genetic manipulation which is in the opinion of the Committee likely to result in the production of a tree pest.

(2) The Committee may attach any condition to the grant of a licence under this section and may at any time vary or revoke any such condition or revoke such licence.

(3) Nothing in paragraph (a) of subsection (1) of this section shall be deemed to prohibit the killing or destruction of any tree pest, plant, wood or genetically manipulated material referred to in that paragraph.

**Examination, sampling and marking.**

3. The Inspector, on production if so required of his authority, may at all times for the purposes of this Ordinance enter any premises on which he has reasonable grounds for suspecting that there is present –

- (i) any plant or wood carrying or infected with, or likely to be carrying or infected with any non-indigenous tree pest,
- (ii) a non-indigenous tree pest,
- (iii) a tree pest which has been subjected to genetic manipulation, or any genetically manipulated material,

and may examine the said premises and examine and take samples of any plant, wood, tree pest or genetically manipulated material and may also mark the said premises and mark any plant or wood (whether or not carrying or infected with any tree pest), tree pest or genetically manipulated material which may be there and any containers associated therewith.

**Remedial and precautionary measures.**

5. (1) If the Inspector has reasonable grounds for suspecting that there is present on any premises in this Island –

- (a) any plant or wood carrying or infected with, or likely to be carrying or infected with, a non-indigenous tree pest,
- (b) a non-indigenous tree pest,
- (c) a tree pest which has been subjected to genetic manipulation, or any genetically manipulated material,

he may serve upon the occupier or other person in charge of the premises a notice in writing requiring him, within such time or during such period at such place and in such manner as may be specified in the notice to take such steps –

- (i) to destroy or to treat in some other way any plant or wood referred to in paragraph (a) of this subsection and to prevent the spread of any non-indigenous tree pest which such plant or wood is, or is suspected by the Inspector to be carrying or by which such plant or wood is, or is suspected by the Inspector to be, infected,
- (ii) to destroy any tree pest or genetically manipulated material referred to in paragraphs (b) and (c) of this subsection and to prevent the spread of such tree pest or genetically

manipulated material,

as may also be specified in the notice.

(2) If the Inspector has reasonable grounds for suspecting that there is present on any premises any plant or wood carrying or infected with a non-indigenous tree pest, he may serve upon the occupier or other person in charge of any premises which adjoin or are in close proximity to the first-mentioned premises a notice in writing requiring him to take such steps as appear to the Inspector to be necessary to prevent the spread of that non-indigenous tree pest from within the first-mentioned premises.

(3) Where treatment other than destruction is required by a notice served under subsections (1) or (2) of this section, the person upon whom the notice was served shall be permitted within the period specified in the notice to destroy any plant or wood to which the notice relates, and if he shall so destroy any such plant or wood to the satisfaction of the Inspector he shall be deemed to have complied with the notice so far as it relates to such plant or wood.

(4) Any destruction or other treatment required by a notice served under subsection (1), or any steps required by a notice served under subsection (2), of this section shall be carried out by the person upon whom the notice is served to the satisfaction of the Inspector at a place designated by the Inspector and, except with the written authority of the Committee or the Inspector, no plant, wood, tree pest or genetically manipulated material to which any such notice refers shall be moved otherwise than to such a place.

(5) A notice served under subsections (1) or (2) of this section may at any time be amended or withdrawn by the Inspector by a further notice in writing served upon the person on whom the first-mentioned notice was served.

(6) If the occupier or other person in charge of the premises to which the notice relates shall fail to comply with the requirements of a notice served under subsections (1) or (2) of this section (including where relevant a notice which has been amended under subsection (5) of this section) then, without prejudice to any proceedings under this Ordinance consequent upon such failure, the Committee

may apply *ex parte* to the Court for an order authorising the Inspector to enter those premises and take such steps as appear to the Inspector to be necessary either to ensure compliance with the requirements of the said notice or to remedy the consequences of the failure to carry them out; and the cost of taking such steps shall be recoverable by the Committee as a civil debt from the person upon whom the notice was served.

**Persons accompanying the Inspector.**

6. The Inspector entering any premises for any of the purposes of this Ordinance may be accompanied by such other persons acting under his instructions and by such equipment as appear to him to be necessary, and such other persons, whether or not accompanied by the Inspector, upon production if required of their authority in that behalf given by the Committee, may remain on the premises, and from time to time re-enter the premises with such equipment as aforesaid, and carry out such work for the purposes aforesaid and in such manner as the Inspector may direct.

**Information to be given.**

7. (1) Every person who has or has had or is reasonably suspected by the Committee to have or have had in his possession or under his charge any non-indigenous tree pest, any plant or wood carrying or infected with any such pest, any tree pest which has been subjected to genetic manipulation or any genetically manipulated material and every person who as auctioneer, salesman or otherwise has sold or offered for sale or is reasonably suspected by the Committee to have sold or offered for sale any such tree pest, plant, wood or genetically manipulated material as aforesaid shall, if so required by a notice in writing from the Committee, give to the Committee or, if so specified in the notice, to the Inspector within such time as shall also be specified in the notice, all such information as he possesses as to the persons who have or have had or are likely to have or to have had any such tree pest, plant, wood or genetically manipulated material to which the said notice relates in their possession or under their custody or control.

(2) Any information given under the provisions of this section shall not be available as evidence against the person giving the same in any prosecution under this Ordinance except in respect of any alleged failure to comply with this section.

(3) Any person who without reasonable excuse fails to give information in compliance with a notice served under the provisions of subsection (1) of this section shall be guilty of an offence and liable, on conviction, to a fine not exceeding [level 4 on the uniform scale].

(4) If any person, in purported compliance with a notice served under the provisions of subsection (1) of this section knowingly or recklessly gives any information which is false in any material particular he shall be guilty of an offence and liable, on conviction, to a fine not exceeding [level 4 on the uniform scale].

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**NOTE**

*In section 7, the words and figures in square brackets in subsection (3) and subsection (4) were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.*

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**Service notices.**

**8.** 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.**

9. If any person –
- (a) contravenes or attempts to contravene any of the provisions of this Ordinance or fails to comply with the requirements of any notice served or the terms of any licence granted thereunder or of any condition attached to any such licence, or
  - (b) wilfully impedes or obstructs or attempts to impede or obstruct the Inspector, or any person authorised by the Committee 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 [level 4 on the uniform scale] and the Court by which the person is convicted shall, in addition, have power to authorise the Inspector to seize, destroy or otherwise dispose of any non-indigenous tree pest, plant, wood or genetically manipulated material to which the conviction relates at the expense of the convicted person.

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**NOTE**

*In section 9, the words and figure in the second pair of square brackets were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.*

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**Offences by bodies corporate.**

10. 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.

**Extent.**

11. This Ordinance shall have effect in the islands of Guernsey, Herm and Jethou.

**Citation.**

12. This Ordinance may be cited as the Tree Pests Ordinance, 1982.

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**NOTE**

*The Ordinance was made and came into operation on 29th September, 1982.*

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<sup>1</sup> These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 10, with effect from 6th May, 2004.

<sup>2</sup> These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 12(a), with effect from 6th May, 2004.

<sup>3</sup> The functions, rights and liabilities of the Commerce and Employment Department and its Minister arising under or by virtue of this Ordinance were previously transferred to and vested in them, respectively, from the Committee for Horticulture and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 10, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

<sup>4</sup> The functions, rights and liabilities of the Policy Council and its Minister arising under or by virtue of this Ordinance were previously transferred to and vested in them, respectively, from the Civil Service Board and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 12(a), with effect from 6th May, 2004, subject to

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the savings and transitional provisions in section 4 of the 2003 Ordinance.

REPEALED