

## Guidance to Forestry Commission staff carrying out plant health inspections

### Introduction

This Guidance note sets out advice to officers who carry out inspections on privately owned land. It covers woodland as well as gardens forming part of a private dwelling.

In considering the action to take, officers should be aware that in some situations they will be the bearer of bad news, and they should be prepared for a hostile reaction. Guidance is given on what to do in such circumstances, but the first consideration must always be for personal safety - both their own and that of any other persons in the vicinity. The aim, always, is collaboration, not confrontation.

### The Law

Plant Health inspections are carried out using powers set out in the Plant Health (Forestry) Order 2005. The principal articles are contained in Part 6 of the Order, and are reproduced in the Annex to this Guidance. In summary:

- an inspector has the power to enter premises with or without permission to check for the presence of pests, and to photograph or take samples. ('Premises' includes land, buildings, vehicles, railway wagons etc.) They may also ask to examine records, including information held on a computer, and may take copies. They may take other people and equipment on to the premises;
- if they wish to enter premises which are used wholly or mainly as a dwelling, inspectors may only exercise the power to do so after obtaining a warrant. However, premises may be entered without a warrant if the occupier or other person in charge voluntarily agrees;
- inspectors can, if they have reasonable grounds for suspecting that a pest is present on the premises, or is likely to be present, serve notice specifying any action necessary to either destroy or treat the pest, the material which might be harbouring it, or to require the material to be moved elsewhere, or to prohibit its removal, or to require any other action which is deemed necessary to prevent any further spread of the pest; and
- alternatively, after giving the occupier or other person in charge reasonable notice of their intention to do so, they may enter the premises and take any action they deem necessary to destroy any pests or material which might be infested.

As can be seen, the powers available to an inspector are significant. Those who fail to carry out the instructions of an inspector, or who intentionally obstruct an inspector, could, on conviction, face a fine of up to £5000. These powers must be used wisely,

and at all times inspectors must act reasonably. In most cases you will be able to take samples for laboratory analysis or otherwise seek a second opinion. However, in some situations, you will need to exercise your judgement, weigh up the facts, and take and action a decision immediately.

### **Authority Card**

You should have with you an authorisation card and the list of legislation to which it applies. If you do not have an authority card, contact Sheila Inglis in Plant Health ([sheila.inglis@forestry.gsi.gov.uk](mailto:sheila.inglis@forestry.gsi.gov.uk)), sending a colour, head-and-shoulders, passport-style photograph.

### **The first contact**

You should introduce yourself by name and, if it is a personal visit and not a telephone call, show your authority card as means of identification.

You should clearly explain the reason for your visit and, if there are already grounds for suspecting that a listed pest or disease might be present, you must mention this. It might be, for example, that infection has been confirmed in a neighbouring woodland. (See also '**Disclosure**' below)

It is also important to ensure that you are dealing with the right person, and that they have the authority to act on behalf of the owner. Legally, we are obliged to deal with the occupier or other person in charge, who might or might not be the owner. This becomes more important in the event that some form of action is needed and a Notice has to be served. (See also '**Serving Notices**' below)

At this point in the visit it is often useful to mention that the overall objective of our work is to look after the health and wellbeing of our woodlands, which is in the interests of everyone. We recognise, however, that sometimes this means that work is needed, which might mean that expense is incurred for those in charge of the woodland, but that we will do what we can to minimise the impact. You should say that you hope that we can work together on this. This should let you gauge whether you are likely to face resistance, and possibly hostility, and to plan accordingly. (See '**When things go wrong**' below).

### **Explain what happens now, and what might happen next**

Once you are satisfied that you are dealing with the right person, if the first contact is by telephone, you should arrange a mutually convenient time to visit. If your initial assessment from a telephone call is that the visit might be hostile, you must arrange to take a colleague with you. As well as providing moral support, your colleague will be able to provide collaborating evidence in the event that any legal action becomes necessary. If your request is refused, politely but firmly explain that you will be visiting and that you plan to arrive at (give date and time), then terminate the call and note the date, time, and what was said.

When you visit, you should explain why you are there and what you want to do. In most cases this will be to walk the site and, if symptomatic material is found, to carry out tests and take samples. You should also explain that in the event that you do detect symptomatic material you will be serving Notice which, initially, will prevent the removal of any wood (of any species) from the site. If symptomatic material is tested on site with an LFD device, and this proves positive, the Notice may also require trees to be felled and impose biosecurity precautions to prevent accidental removal of material which might lead to further spread of the disease.

Further information about this aspect is available in separate guidance that can be downloaded from the [Plant Health pages](#) of the Forestry Commission website. You should make it clear that you are there to work with them to deal with the problem. You should also make it clear that, although you recognise that this is not of their making, it is Commission policy to ensure that whatever needs to be done to minimise the overall risk and impact is carried out.

### **Statutory Notice**

If you find that a pest or disease is present or likely to be present, you will need to serve Notice using the standard template. Wherever possible, this should be done while discussing the measures required, and the timetable to be followed, with the person responsible. The aim, always, is co-operation and collaboration. Notices may be completed by hand, and you should ensure that the requirements you wish to impose are clear, precisely defining the area (a map, if available, can be a useful appendix), what is to be done, and the date by which the work is to be completed.

### **Disclosure**

Disclosure of details of sites that are or might be infected is regulated by the Environmental Information Act, the Human Rights Act and the Freedom of Information Act. The general presumption is against disclosing the identity of sites unless they are sites under Forestry Commission management, sites whose managers have already made the information public (e.g. National Trust gardens), or where we have been given specific permission by the person in charge of the site to do so. This should be explained to the person responsible for the site you are visiting.

It might be necessary to use caution if the reason for your visit is because a neighbouring site is under Notice, limiting what you say to simply confirming that the disease has been confirmed in nearby woodland. You should ask whether the person responsible for the site being visited objects to disclosure, and record their wishes. Where they do object, you should explain that we will do all we can to honour their wishes, unless there are clear public interest grounds not to, in which case we might be forced to disclose under the legislation referred to above. Separate guidance on disclosure has been prepared and you should familiarise yourself with its contents.

## **Sampling**

This guidance does not seek to set how to carry out sampling, but to provide advice on what is necessary by way of results to inform decision making, especially on what action, if any, might be required.

Results from sampling, whether carried out on site or by laboratory analysis, are useful in providing confirmation of the presence of infection if a positive result is obtained. However, absence of a positive result from either a Lateral Flow Device (LFD) or molecular or other diagnostic work in the laboratory does not provide evidence of disease status, one way or the other.

This might mean that repeat sampling is required, but that should not deter you from taking action if there are other good reasons for doing so. It is important to bear in mind that any infective material moved from the site poses a risk of further spread, and a precautionary approach is therefore always appropriate. If there are good visual symptoms to suggest that a listed pest or disease is present, that provides enough justification to take at least the minimum level of action - prohibition of removal of material off site - while further investigation is carried out. This might require a site investigation by Forest Research. Such an approach can be defended as being reasonable, on the basis that a pest might be present.

## **Biosecurity**

At the end of the visit, and before leaving the site, you and anyone with you must clean and disinfect footwear and any tools you have used for taking samples. You should make sure that the person responsible for the site is aware that this is standard working practice before leaving any site where there is a risk of contamination. This might help to reassure them that you have not inadvertently brought infected material on to their land from another site you have previously visited.

## **Keeping a record**

It is important to keep records of visits, noting dates, the people visiting as well as those visited, the work carried out, the findings, the work required, and whether this was agreed by the other party. If co-operation has been hard or impossible to secure, it will be important to keep a note of anything said to you. These facts might be important in the event that proceedings are considered necessary, including simple written warnings about non-compliance.

Notes should be taken contemporaneously, wherever possible, and should not be recorded in isolation from other records. Notes taken and kept in date order with records of other meetings are less likely to be challenged as having been made after the event, and for the purpose of proceedings.

Photographs of relevant material will also be useful to provide evidence of what you have seen.

## Follow-up

If it is necessary to follow up your visit, or if the person visited requests a follow-up, be sure to agree this, and advise that you will be in touch later to agree a time for the second or subsequent visit. If the next visit is to be carried out by someone else, be sure to make sure they know whom to contact, and that their call is expected.

Offer to follow up on any questions or calls for advice that the person you are visiting has after you have left. Remember it is likely that this will be the first occasion where they have had to deal with such a situation, and it is likely that questions will occur to them after your visit has ended.

## When things go wrong

Most visits are received in a spirit of co-operation and understanding, although it is not unusual to have to spend some time at the beginning to foster a good working relationship and to dispel any concerns about an officious or unsympathetic ear.

However, if it becomes apparent that it is unlikely that the person you are visiting will co-operate, and most especially where there is a level of aggression that makes you feel uncomfortable, you should terminate the visit immediately, advising that you will make another visit later. Do not mention that you will be accompanied by another person, because this might only serve to aggravate the situation. Remember, safety first. If the premises are used as a private dwelling, a warrant should be obtained, and you should advise the person concerned that you will return when you have a warrant from a Justice of the Peace (or, in Scotland only, either a Justice of the Peace or a Sheriff). (See '**Obtaining a Warrant**' below).

Where the premises are not a private dwelling, and when you have made arrangements with a colleague for a second visit, you should contact the person concerned. Say that you will be visiting again, accompanied by your colleague (name) and that you intend to inspect the woodland and to take samples. Only if the person refuses should you ask them to suggest an alternative date and time. If they still refuse, advise that you and a colleague will be visiting and state when this will be. In the event that access is still refused when you call, advise that you consider that you are being obstructed and that the facts will be reported.

Record all the salient details and pass these to the Head of Plant Health, who will instigate proceedings either through the Defra Investigations Unit (England and Wales) or the Procurator-Fiscal (Scotland). He will also advise on whether a warrant should be obtained (See '**Obtaining a Warrant**' below).

## The Police

The Police will not be able to provide assistance in gaining entry, regardless of whether a warrant has been obtained. However, if you think that you are likely to receive a hostile reception, and especially if there is reason to believe that such hostility might be physical, you should contact the local Police, explain the situation,

and request their attendance to ensure that there is no breach of the peace. It is worth noting that it has not yet proved necessary to ask for this assistance.

### **Investigating Officer**

You might suspect that there has been non-compliance with a Notice, perhaps following an earlier visit where it was clear that work was either not proceeding, or not proceeding quickly enough for completion by the due date. If so, you may consider asking for support from Defra's Investigations Unit as the second person in the team revisiting the site (England and Wales only). This has the advantage that, should it become necessary, the Investigating Officer can take statements under caution then and there, both from Forestry Commission staff and the person who has allegedly failed to comply. Should you consider this to be necessary, or the premises are located in Scotland, you should seek further advice from either the Head of Plant Health or his Deputy. Where it is agreed that this is appropriate, Plant Health will make the necessary approaches to identify an Investigating Officer (who might or might not be a full-time employee of Defra) and will pass contact details to you once they are known.

In Scotland, the initial 'second person' will normally be the Plant Health Regional Manager. If, after the second visit the situation has not been resolved, and if appropriate, the facts will be reported to the Procurator-Fiscal, who will take responsibility for any legal proceedings.

### **Obtaining a warrant**

Where entry to land which forms part of a private dwelling has been refused, it might be necessary to obtain a warrant from a Justice of the Peace or, in Scotland, either a Justice of the Peace or a Sheriff. You should contact the Head of Plant Health for advice whenever you feel that a warrant might be required.

### **Further advice**

In preparing this Guidance, we have tried to identify all of the likely scenarios you might encounter, and to provide advice on what to do. However, should you be faced with something new and unforeseen, you should seek advice from the Head of Plant Health in the first instance.

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**Forestry Commission**  
**October 2010**

**An extract from the Plant Health (Forestry) Order 2005 follows.**

## ANNEX A

The following is an extract from the Plant Health (Forestry) Order 2005. An unofficial consolidation of the Order and its various amendments is available at [www.forestry.gov.uk/planthealth](http://www.forestry.gov.uk/planthealth).

## 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.