

2006 No. 2695

PLANT HEALTH

**The Plant Health (Wood Packaging Material Marking)
(Forestry) Order 2006**

<i>Made</i>	- - - -	<i>9th October 2006</i>
<i>Laid before Parliament</i>		<i>13th October 2006</i>
<i>Coming into force</i>	- -	<i>6th November 2006</i>

The Forestry Commissioners make the following Order in exercise of the powers conferred on them by sections 3(1) and (4) and 4A of the Plant Health Act 1967^(a):

The Treasury consents to the making of this Order:

Title and commencement

1. This Order may be cited as The Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006 and comes into force on 6th November 2006.

Interpretation

2. In this Order—

“approved measure” means any of the approved measures specified in Annex I to ISPM No. 15 or any other treatment or measure recognised by the Commissioners to have equivalent effect;

“certificate” means a certificate granted in accordance with the provisions of this Order which authorises the holder to apply an ISPM No. 15 mark to wood packaging material;

“dunnage” means wood used or intended for use to wedge or support any cargo;

“inspector” means any person authorised by the Commissioners to be an inspector for the purposes of the Plant Health (Forestry) Order 2005^(b);

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

(a) 1967 c. 8; section 3(1) was amended by the European Communities Act 1972 (c. 68), section 4(1) and Schedule 4, paragraph 8; section 3(4) was substituted by section 42 of the Criminal Justice Act 1982 (c. 48); section 4A was inserted by the Agriculture Act 1986 (c. 49), section 3. Section 1(2) of the Plant Health Act 1967 defines “competent authorities” for the purposes of the Act.

(b) S.I. 2005/2517.

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

“ISPM No. 15 mark” means a mark which contains the information specified in Annex II of ISPM No. 15 and such other information as may be required by the certificate;

“manufacture”, in relation to wood packaging material, includes—

- (a) the recycling, remanufacture and repair of such material;
- (b) the application of an approved measure to such material; and
- (c) for the purposes of article 9, the application of an ISPM No. 15 mark to such material;

“non-manufactured wood” means wood which has not undergone a manufacturing process involving glue, heat or pressure or a combination of these;

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

“recycling”, in relation to wood packaging material, means subjecting wood packaging material to a process in which it is dismantled, either partially or completely, and its components used without further re-working in the manufacture of a new item of wood packaging material;

“remanufacture”, in relation to wood packaging material, means subjecting wood packaging material to a process in which it is dismantled, either partially or completely, and its components used either—

- (a) in their original form together with previously unused wood; or
- (b) after re-sawing whether or not together with previously unused wood, in the manufacture of a new item of wood packaging material;

“repair”, in relation to wood packaging material, means subjecting wood packaging material to a process in which it has one or more components removed and replaced with previously unused wood;

“the Commissioners” means the Forestry Commissioners;

“wood” means any wood which retains part or all of its natural round surface, with or without bark;

“wood packaging material” means non-manufactured wood, excluding wood of 6mm or less, which is—

- (a) in the form of packing cases, boxes, crates, drums and similar packings, pallets, box pallets and other load boards, pallet collars or dunnage; or
- (b) is a component intended to be used in the manufacture of such items; and

“wood packaging material manufacturer” means any person who manufactures wood packaging material in the course of a trade or business.

Restrictions on marking wood packaging material

3.—(1) No person shall apply an ISPM No. 15 mark to any wood packaging material except as authorised by a certificate.

(2) No person shall apply any mark other than an ISPM No. 15 mark to wood packaging material for the purpose of indicating that it has been subject to an approved measure.

(3) Unless so authorised by the Commissioners in writing, no person shall manufacture any wood packaging material from wood to which has been applied an ISPM No. 15 mark, or any other mark designed to indicate that it has been subject to an approved measure, without first removing that mark.

Application for certificate

4.—(1) Any wood packaging material manufacturer who wishes to apply an ISPM No. 15 mark to any wood packaging material manufactured by him shall apply to the Commissioners for a certificate in accordance with this article.

- (2) An application for a certificate shall—
- (a) specify any approved measure or measures which the manufacturer wishes to carry out and in respect of which authority to apply an ISPM No. 15 mark is sought; and
 - (b) provide the Commissioners with such information as they may specify to enable them to be satisfied that the manufacturer should be permitted to apply an ISPM No. 15 mark to wood packaging material manufactured by him.
- (3) Where the Commissioners have received an application for a certificate, they shall—
- (a) assess whether the applicant is able to carry out in a proper manner any approved measure or measures to which the application relates and whether he should be permitted to apply an ISPM No. 15 mark to wood packaging material manufactured by him; and
 - (b) either issue a certificate or notify the applicant that his application is refused.

Application for renewal of certificate

5.—(1) The holder of a certificate may apply for it to be renewed no earlier than one month before its expiry in such form and manner as the Commissioners may specify.

- (2) On receipt of an application for renewal of a certificate, the Commissioners shall—
- (a) assess whether the applicant is able to carry out in a proper manner any approved measure or measures to which the application relates and whether he should be permitted to apply an ISPM No. 15 mark to wood packaging material manufactured by him; and
 - (b) either renew the certificate or notify the applicant that his application is refused.

Application for reassessment

6.—(1) If, following the refusal of an application for a certificate or for the renewal of a certificate or the withdrawal of a certificate, the Commissioners are satisfied that the condition in paragraph (2) is met, they may invite a wood packaging material manufacturer to apply for reassessment in accordance with the provisions of this article.

(2) The Commissioners may invite an application for reassessment if they are able to identify one or more actions which, if taken, would enable them to issue a certificate.

- (3) An invitation under paragraph (1) shall—
- (a) specify the actions which need to be taken before the Commissioners can be satisfied that they should issue a certificate;
 - (b) invite the wood packaging material manufacturer to apply for reassessment within three months of the date on which the invitation was received by him; and
 - (c) specify the form and manner in which the application shall be made.

(4) Where the Commissioners have received an application, made in accordance with their invitation, they shall—

- (a) reassess whether the applicant is able to carry out in a proper manner any approved measure or measures to which the application relates and whether he should be permitted to apply an ISPM No. 15 mark to wood packaging material manufactured by him; and
- (b) either issue a certificate or notify the applicant that his application is refused.

Application fees

7. An application for a certificate, for the renewal of a certificate or for reassessment shall be accompanied by the fee specified in the second column of Schedule 1 opposite the reference to that application in the first column and shall be paid in such manner as the Commissioners may specify.

Contents and validity of certificates

8.—(1) A certificate shall—

- (a) be in the form set out in Schedule 2;
- (b) specify any approved measure or measures that it authorises the manufacturer to carry out and in respect of which an ISPM No. 15 mark may be applied;
- (c) specify any information which the Commissioners require to be included in the ISPM No. 15 mark; and
- (d) specify the period for which it remains valid, in accordance with paragraph (2).

(2) The period for which a certificate remains valid shall be—

- (a) three months, in the case of a certificate issued following the withdrawal of a certificate; and
- (b) six months, in all other cases.

Powers of inspectors

9.—(1) For the purpose of ascertaining whether any requirement compliance with which an ISPM No. 15 mark provides evidence has been met, or for any other purpose of this Order, including checking compliance with it, an inspector may, on production if so required of his authority, and at all reasonable hours, enter any premises, other than premises used wholly or mainly as a dwelling, which he reasonably believes are used for the manufacture, collection, storage, trade, transportation or importation of wood packaging material.

(2) An inspector entering premises by virtue of paragraph (1) may—

- (a) observe and monitor the manufacture of wood packaging material;
- (b) examine or test any treatment facility, machinery, tools or other equipment used for the manufacture of wood packaging material;
- (c) examine or take samples of wood packaging material, or its components;
- (d) inspect or make copies of any documents or records (in whatever form they may be held) relating to the manufacture of or trade in wood packaging material; or
- (e) take such photographs of the premises or of any material or of other objects found there or of any activity carried on there in connection with the manufacture of wood packaging material.

(3) For the purpose of the exercise of any of his powers under paragraph (2), an inspector may require the occupier or other person in charge of the premises to provide adequate lighting or, where appropriate, suitable areas for inspection.

(4) Without prejudice to the power of the Commissioners under article 10, where an inspector knows, or has reasonable grounds for suspecting, that a mark has been applied to wood packaging material other than in accordance with this Order, he may remove, or require another person to remove, such mark.

Seizure notices

10.—(1) Where an inspector knows, or has reasonable grounds for suspecting, that a person has applied or intends to apply a mark to wood packaging material other than in accordance with this Order, he may seize from that person or from any premises at which the inspector believes such a mark has been or may be applied, any stencil, template or other item of equipment (referred to in this article as “the seized items”) that appears to him capable of being used for applying an ISPM No. 15 mark, or any other mark which may be intended to indicate that wood packaging material has been subject to an approved measure.

(2) An inspector shall give to the person appearing to him to be in charge of the seized items a notice (referred to in this article as a “seizure notice”)—

- (a) giving the grounds for seizing such items; and

- (b) informing him of his rights under this article to make a claim, and the address for the service of the claim.
- (3) If an inspector is not able to remove the seized items immediately, he may mark the items in any way that he sees fit and serve a notice on the person in charge of the items identifying them and prohibiting their movement or use until they are collected.
- (4) Any person claiming that any seized item was not liable to seizure shall, within one month of the seizure, notify his claim to the Commissioners at the address specified in the seizure notice, setting out the grounds in full.
- (5) If a notification of a claim is not received within one month, the Commissioners shall destroy the seized items.
- (6) If a notification of a claim is received within one month, the Commissioners shall either return the seized items or take proceedings for an order for their destruction by way of a complaint in a magistrates' court (or, in Scotland, the sheriff court) and, if the court finds that any seized items were used to apply a mark to wood packaging material other than in accordance with this Order, or were intended to be so used, it shall order their destruction.
- (7) The Commissioners may recover all reasonable costs incurred by them to secure destruction of the seized items from the person on whom the seizure notice was served.
- (8) The Commissioners shall publicise seizure notices in such manner as they see fit.

Withdrawal of certificates

11.—(1) If, in the opinion of the Commissioners, a wood packaging material manufacturer to whom a certificate has been issued—

- (a) has not properly carried out an approved measure to which the certificate relates;
- (b) has otherwise manufactured wood packaging material in a manner in which the Commissioners consider it inappropriate to continue to permit the manufacturer to apply an ISPM No. 15 mark to wood packaging material manufactured by him; or
- (c) has not complied with any provision of this Order,

they may orally or by notice in writing withdraw the certificate with immediate effect.

(2) Where the Commissioners withdraw a certificate orally, they shall confirm such withdrawal in writing as soon as is reasonably practicable.

Offences

12.—(1) A person shall be guilty of an offence if, for the purposes of procuring the issue of a certificate under this Order, he—

- (a) makes a statement which he knows to be false in a material particular;
- (b) recklessly makes a statement which is false in a material particular; or
- (c) intentionally fails to disclose any material information.

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

- (a) dishonestly alters a certificate; or
- (b) dishonestly creates an instrument which purports to be a certificate.

(3) A person shall be guilty of an offence if, without reasonable excuse, proof of which shall lie on him, he—

- (a) contravenes or fails to comply with any provision in article 3;
- (b) contravenes or fails to comply with a notice served under article 10(3); or
- (c) intentionally obstructs an inspector in the exercise of his powers given by this Order.

(4) 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.

(5) For the purposes of paragraph (4), “director” in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(6) 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.

(7) 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.

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

The official Seal of the Forestry Commissioners 29th September 2006

Wilma Harper
Secretary to the Forestry Commissioners

29th September 2006

We consent,

Dave Watts
Kevin Brennan
Two of the Lords Commissioners
of Her Majesty’s Treasury

9th October 2006

SCHEDULE 1

Article 7

APPLICATION FEES

<i>Application for:</i>	<i>Fee</i>
Certificate	£400.00
Renewal of certificate	£120.00
Reassessment	£120.00

SCHEDULE 2

Article 8(1)

ISPM No. 15 CERTIFICATE

UNITED KINGDOM WOOD PACKAGING MATERIAL MARKING PROGRAMME

WOOD PACKAGING MATERIAL MANUFACTURED IN GREAT BRITAIN

This is to certify that

*(Manufacturer name
and address)*

has undergone an assessment and demonstrated that wood packaging material manufactured on the premises described above can be produced in conformity with International Standard for Phytosanitary Measures No. 15 of March 2002 on Guidelines for regulating wood packaging material in international trade, prepared by the Secretariat of the International Plant Protection Convention (IPPC). This certificate authorises the manufacturer, including any agent acting on his behalf, to apply the ISPM No. 15 mark in accordance with this certificate, including the Appendix, and the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006.

Authority includes application of the following approved measure(s) on the manufacturer's premises

Registration number: _____

This certificate remains valid until: _____

Signed on behalf of the Forestry Commission FC SEAL

APPENDIX INFORMATION TO BE INCLUDED IN THE ISPM NO. 15 MARK

An ISPM No. 15 mark applied under the authority of this certificate shall contain the information specified in Annex II of ISPM No. 15 and the information specified below.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements International Standard for Phytosanitary Measures No. 15 of March 2002 on Guidelines for regulating wood packaging material in international trade^(a), prepared by the Secretariat of the International Plant Protection Convention (IPPC) established by the Food and Agriculture Organisation of the United Nations.

Under the Order, no person may: apply an ISPM No. 15 mark to any wood packaging material except as authorised by a certificate issued under the Order; apply any mark other than an ISPM No. 15 mark to wood packaging material for the purpose of indicating that it has been subject to an approved measure; or, without the authorisation of the Commissioners, manufacture, remanufacture, recycle or repair any wood without first removing any existing ISPM No. 15 mark (article 3).

Articles 4 to 8 provide procedures for applications for certificates, renewal of certificates and reassessment, including the fees payable in respect of those applications (which are specified in Schedule 1), and for the issue and validity of certificates.

Inspectors have powers to enter premises reasonably believed to be used for the manufacture, collection, storage, trade, transportation or importation of wood packaging material and to carry out certain investigations for the purpose of ascertaining whether an approved measure has been properly carried out on wood packaging material to which an ISPM No. 15 mark has been applied, or for any other purpose of this Order, including checking compliance with it (article 9). An inspector may remove, or require another person to remove, a mark if he has reasonable grounds for suspecting that it has been applied to wood packaging material other than in accordance with this Order (article 9(4)).

An inspector may also seize items he knows or suspects were used to apply a mark to wood packaging material other than in accordance with this Order, or were intended to be so used, and provision is made for claims to be made against seizure, referral to the Court and destruction of seized items (article 10).

The Commissioners may, orally or in writing, withdraw a certificate issued under this Order if, in their opinion, a wood packaging material manufacturer to whom a certificate has been issued has not properly carried out an approved measure to which the certificate relates or has not complied with any provision of this Order (article 11).

It is an offence: to contravene any of the provisions of article 3; to contravene a notice served under article 10(3) prohibiting the movement of seized items; intentionally to obstruct an inspector in the exercise of his powers given by this Order; knowingly or recklessly to make a false statement or intentionally to fail to disclose any material information for the purposes of procuring the issue of a certificate under this Order; to dishonestly alter a certificate; or to dishonestly create an instrument which purports to be a certificate (article 12).

A person found guilty of an offence under the Order is liable on summary conviction to a fine of up to level 5 on the standard scale (article 12(8)).

A Regulatory Impact Assessment has been prepared and placed in the Library of each House of Parliament. Copies can be obtained from the Plant Health Service of the Forestry Commission, Silvan House, 231 Corstorphine Road, Edinburgh EH12 7AT.

^(a) Available from the IPPC Secretariat, AGPP-FAO, Vialle Delle Terme di Caracella, 00100 Rome, Italy and <http://www.ippc.int/IPPC/En/default.htm>.

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