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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 434**

**TOWN AND COUNTRY PLANNING**

**The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010**

*Made* - - - - - *2nd December 2010*  
*Laid before the Scottish*  
*Parliament* - - - - - *6th December 2010*  
*Coming into force* - - - - - *1st February 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 160(8), 161(3) and (4), 173 and 275 of the Town and Country Planning (Scotland) Act 1997<sup>(1)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 and come into force on 1st February 2011.

**Interpretation**

2. In these Regulations—

“interested person” means, in relation to a tree preservation order—

- (a) an owner, lessee and occupier of the land on which the trees, groups of trees or woodlands to which the tree preservation order relates are situated; and
- (b) any other person who, to the knowledge of the planning authority, would but for the tree preservation order be entitled—
  - (i) to fell, top, lop, uproot or otherwise damage or destroy any tree to which the tree preservation order relates; or
  - (ii) to work by surface working any materials in, on or under such land;

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(1) 1997 c.8. Section 160(8) was inserted by section 28(2)(c) of the Planning etc. (Scotland) Act 2006 (asp 17) (“the 2006 Act”). Part 7, Chapter 1 was otherwise amended by sections 28, 54(9) and 56 of and the Schedule to the 2006 Act, sections 95 and 96 of the Planning and Compulsory Purchase Act 2004 (c.5) and section 36 of and paragraphs 56 and 57 of the Schedule to the Planning Act 2008 (c.29). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

“original order” means the tree preservation order which is varied or revoked by another tree preservation order;

“revocation order” means a tree preservation order which revokes another tree preservation order; and

“variation order” means a tree preservation order which varies another tree preservation order.

### **Tree preservation order**

**3.—(1)** A tree preservation order must define the position of the trees, groups of trees, or woodlands to which it relates and for that purpose is to include a map.

(2) The map contained in a tree preservation order must be to a scale which is sufficient to give a clear indication of the position of the trees, groups of trees or woodlands to which the tree preservation order relates.

(3) Paragraphs (1) and (2) do not apply in respect of—

- (a) a variation order which does not amend the original order so as to include a new tree, group of trees or woodland; or
- (b) a revocation order.

### **Procedure and representations**

**4.—(1)** A planning authority must, as soon as practicable after making a tree preservation order—

- (a) make a copy of the tree preservation order available for public inspection at a place or places convenient to the locality in which the trees, groups of trees, or woodlands are situated;
- (b) give notice of the making of the tree preservation order in a newspaper circulating in the locality in which the trees, groups of trees, or woodlands are situated including a statement containing the following information—
  - (i) the grounds for making the tree preservation order;
  - (ii) where and at what times a copy of the tree preservation order may be inspected;
  - (iii) how representations with respect to the tree preservation order may be made to the planning authority; and
  - (iv) the date by which any representation must be made to the planning authority (being a date not earlier than 28 days after the date on which the notice is given);
- (c) send a copy of the tree preservation order to The Forestry Commissioners<sup>(2)</sup>; and
- (d) give notice to all interested persons containing the information specified in paragraphs (b) (i), (iii) and (iv) together with a copy of the tree preservation order.

(2) A copy of the tree preservation order must be made available for inspection, free of charge, at all reasonable hours, at the offices of the planning authority by whom the tree preservation order was made.

### **Representations**

**5.—(1)** Representations may be made to the planning authority with respect to a tree preservation order by—

- (a) an interested person by the date specified in the notice given under regulation 4(1)(d); and
- (b) any other person by the date specified in the notice given under regulation 4(1)(b).

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(2) The Forestry Commissioners are continued by and operating under the Forestry Act 1967 (c.10).

(2) Every such representation must be made in writing, state the grounds thereof, and specify the particular trees, groups of trees, or woodlands in respect of which it is made.

(3) The planning authority must consider any representations made in accordance with this regulation before the tree preservation order is confirmed.

#### **Action after confirmation of a tree preservation order**

6.—(1) Where a tree preservation order is confirmed it must be endorsed to that effect, and the endorsement must also indicate—

- (a) that the tree preservation order was confirmed with modifications or without modification, as the case may be; and
- (b) the date on which it was confirmed.

(2) The planning authority must, as soon as practicable after confirming a tree preservation order, give notice of the confirmation of the tree preservation order to—

- (a) The Forestry Commissioners;
- (b) interested persons; and
- (c) any other person who made a representation in accordance with regulation 5.

(3) Notice given under paragraph (2) is to state—

- (a) the date on which the tree preservation order was confirmed;
- (b) the reasons for confirming the tree preservation order;
- (c) where the tree preservation order was confirmed with modifications, the reasons for the modifications; and
- (d) where and at what times a copy of the tree preservation order as confirmed is available for inspection.

(4) The planning authority must make a copy of the tree preservation order, as confirmed, available for public inspection—

- (a) at a place or places convenient to the locality in which the trees, groups of trees, or woodlands are situated; and
- (b) free of charge, at all reasonable hours, at the offices of the planning authority.

(5) Where the tree preservation order was confirmed with modifications the planning authority must send a copy of the tree preservation order, as confirmed, together with the notice given under paragraph (2)(a) or (b).

(6) Where the planning authority confirm a variation order or revocation order, the planning authority must endorse the original order with a statement to the effect that the order has been varied or revoked, as the case may be, specifying the date and title of the variation order or revocation order.

(7) Where the planning authority confirm a revocation order, the planning authority are to withdraw from public inspection the copy of the original order made available in accordance with paragraph (4).

#### **Action where a tree preservation order is not confirmed**

7. Where a planning authority decides not to confirm a tree preservation order it must, as soon as practicable—

- (a) endorse the tree preservation order with a statement to that effect and with the date of its decision; and
- (b) give notice of its decision to—

- (i) The Forestry Commissioners;
- (ii) interested persons; and
- (iii) any other person who made a representation in accordance with regulation 5.

### **Trees in conservation areas**

**8.—(1)** Section 172 of the Act (preservation of trees in conservation areas) is not to apply where the act is—

- (a) the cutting down of a tree in accordance with a felling licence granted by The Forestry Commissioners under the Forestry Act 1967<sup>(3)</sup>;
- (b) the cutting down, uprooting, topping or lopping of a tree on land in the occupation of a planning authority when this is done by or with the consent of that authority;
- (c) the cutting down, uprooting, topping or lopping of a tree having a diameter not exceeding 75 millimetres;
- (d) the cutting down or uprooting in a woodland of a tree having a diameter not exceeding 100 millimetres where this is done to improve the growth of other trees;
- (e) the cutting down, uprooting, topping or lopping of a tree by, or on behalf of, The Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967 or otherwise under their management or supervision;
- (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land<sup>(4)</sup> of the statutory undertaker and the work is necessary—
  - (i) in the interests of the safe operation of the undertaking;
  - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
  - (iii) to enable the statutory undertaker to carry out development for which planning permission is granted by the 1992 Order;
- (g) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
- (h) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
- (i) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to carry out works to implement a planning permission (other than an outline planning permission or planning permission in principle) granted on an application under Part 3 or section 242A of the Act<sup>(5)</sup>, or deemed to have been granted (whether for the purposes of Part 3 of the Act or otherwise);
- (j) the cutting down, topping, lopping or uprooting of a tree by, or at the request of, SEPA to enable SEPA to carry out development for which planning permission is granted by the 1992 Order; or
- (k) the cutting down, topping, lopping or uprooting of a tree if—
  - (i) it is urgently necessary in the interests of safety;

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<sup>(3)</sup> 1967 c.10.

<sup>(4)</sup> See sections 214 and 215 of the Act respectively for the meaning of statutory undertaker and operational land.

<sup>(5)</sup> Section 242A was inserted by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5) and amended by section 54(13) of the Planning etc. (Scotland) Act 2006 (asp 17).

- (ii) it is necessary for the prevention or abatement of a nuisance; or
- (iii) it is in compliance with any obligation imposed by or under an enactment.

(2) In this regulation—

“the 1992 Order” means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(6);

“the Act” means the Town and Country Planning (Scotland) Act 1997;

“diameter” means the diameter measured over the bark, at a point 1.5 metres above ground level;

“outline planning permission” has the same meaning as in section 59 of the Act as it applied immediately before section 21 of the Planning etc. (Scotland) Act 2006(7) came into force; and

“SEPA” means the Scottish Environment Protection Agency established under section 20 of the Environment Act 1995(8).

### **Applications for consent**

9.—(1) An application for consent to the carrying out of any act prohibited by a tree preservation order must be made to the planning authority and must—

- (a) specify the operations for which consent is sought;
- (b) give reasons for carrying out such operations; and
- (c) identify the protected tree or trees which would be affected by such operations.

(2) The protected tree or trees must be identified by means of a map or plan of a size and scale sufficient for the purpose.

### **Electronic communications**

10.—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
- (b) the document transmitted by the electronic communication is—
  - (i) capable of being accessed by the recipient;
  - (ii) legible in all material respects; and
  - (iii) sufficiently permanent to be used for subsequent reference.

(3) Any person sending a document using electronic communications is to be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the tree preservation order or application for consent under a tree preservation order, as the case may be, which are capable of being carried out electronically; and

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(6) S.I. 1992/223 as amended by S.I. 1992/1078, S.I. 1992/2084, S.I. 1993/1036, S.I. 1994/1442, S.I. 1994/2586, S.I. 1994/3294, S.I. 1996/252, S.I. 1996/1266, S.I. 1996/3032, S.I. 1997/3060, S.I. 1998/1226, S.S.I. 1999/1, S.I. 2000/2040, S.S.I. 2001/266, S.S.I. 2003/341, S.I. 2003/2155, S.S.I. 2004/332, S.S.I. 2006/1157, S.S.I. 2007/209, S.S.I. 2007/135, S.S.I. 2008/74, S.S.I. 2008/203, S.S.I. 2009/34 and S.S.I. 2010/27.

(7) 2006 asp 17. Section 21 came into force on 3rd August 2009.

(8) 1995 c.25.

- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.
- (4) Deemed agreement under paragraph (3) shall subsist until that person gives notice to revoke the agreement.
- (5) Notice of withdrawal of consent to the use of electronic communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.
- (6) In this regulation—
- “document” includes any notice, consent, agreement, decision, representation, statement or other information or communication;
  - “legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent by means of a document in printed form; and
  - “sent” includes given and, in relation to representations or an application, includes made and cognate expressions are to be construed accordingly.

### **Revocations and saving provisions**

- 11.**—(1) The Regulations mentioned in paragraph (2) are revoked.
- (2) The Regulations are—
- (a) the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975<sup>(9)</sup>;
  - (b) the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Amendment Regulations 1981<sup>(10)</sup>; and
  - (c) the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Amendment Regulations 1984<sup>(11)</sup>.
- (3) Notwithstanding the revocation of the Regulations mentioned in paragraph (2) by this regulation on 1st February 2011, the provisions of those Regulations shall continue to apply as they did immediately before that date in relation to a tree preservation order made before that date.

St Andrew’s House,  
Edinburgh  
2nd December 2010

*STEWART STEVENSON*  
Authorised to sign by the Scottish Ministers

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<sup>(9)</sup> S.I. 1975/1204 as amended by S.I. 1981/1385 and S.I. 1984/329.  
<sup>(10)</sup> S.I. 1981/1385.  
<sup>(11)</sup> S.I. 1984/329.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision regarding the making of tree preservation orders under section 160 of the Town and Country Planning (Scotland) Act 1997 (“the Act”). They replace and revoke the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975.

Regulation 3 requires a tree preservation order to contain a map to describe the location of the trees, group of trees or woodland to which it relates. This requirement is relaxed where the order revokes or varies an earlier order without including any additional tree within the protection conferred by that order. Regulation 4 sets out requirements in relation to notification to interested persons (defined in regulation 2) and to the public. Regulation 5 makes provision for the making of representation and the consideration of such representations by the planning authority. Regulations 6 and 7 respectively make provision regarding the procedure to be followed following a decision to confirm or not to confirm a tree preservation order.

Section 172 of the Act protects trees in conservation areas. Regulation 8 disapplies section 172 in respect of various acts.

Regulation 9 makes provision relating to the how an application for consent to carry out any action prohibited by a tree preservation order is to be made. Regulation 10 makes provision for the use of electronic communications. Regulation 11 revokes the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975 and two other instruments which amended those Regulations and makes saving provisions.