

2007 No. 10

PLANNING

**The Planning (Trees) (Amendment) Regulations (Northern
Ireland) 2007**

Made - - - - - *10th January 2007*

Coming into operation - *12th February 2007*

The Department of the Environment makes the following Regulations in exercise of the power conferred by Article 65(2) of the Planning (Northern Ireland) Order 1991(a).

Citation and commencement

1. These Regulations may be cited as the Planning (Trees) (Amendment) Regulations (Northern Ireland) 2007 and shall come into operation on 12th February 2007.

Amendment of the Planning (Trees) Regulations (Northern Ireland) 2003

2. For the Schedule to the Planning (Trees) Regulations (Northern Ireland) 2003(b), (form of tree preservation order) there shall be substituted the Schedule set out in the Schedule to these Regulations.

Sealed with the Official Seal of the Department of the Environment on 10th January 2007.



Marianne Fleming
A senior officer of the Department of the Environment

(a) S.I. 1991/1220 (N.I. 11) as amended by S.I. 2003/430 (N.I. 8) and S.R. 2006/1252 (N.I.7)

(b) S.R. 2003 No. 444; relevant amending Regulations are S.R. 2006 No. 218 and S.R. 2006 No. 276

SCHEDULE

Regulation 2

Substitution of the Schedule to The Planning (Trees) Regulations (Northern Ireland) 2003

“SCHEDULE

Regulation 2(1)

FORM OF TREE PRESERVATION ORDER THE PLANNING (NORTHERN IRELAND) ORDER 1991 THE PLANNING (TREES) REGULATIONS (NORTHERN IRELAND) 2003

TREE PRESERVATION ORDER

at

(address of the land)

The Department of the Environment (in this Order called “the Department”) in pursuance of the powers conferred upon it by Articles 65 [and 65A] of the Planning (Northern Ireland) Order 1991 HEREBY ORDERS that no person shall, except with the consent of the Department and in accordance with the conditions, if any, imposed on such consent, uproot, wilfully damage, cut down, top, lop, or wilfully destroy or cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of any tree specified in the First Schedule or comprised in a group of trees or in a woodland therein specified, the position of which trees, groups of trees or woodlands is defined in the manner indicated in the First Schedule on the annexed maps which maps shall for the purpose of such definition prevail where any ambiguity arises between them and the specification in the First Schedule.

[The Department HEREBY ORDERS that Article 65A (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on *[insert date]*.]

The Order is subject to the provisions of the Second Schedule and to the exemptions specified in the Third Schedule.

Authorised by the Department of the Environment to sign in that behalf on *[insert date]*.

FIRST SCHEDULE

[Particulars of trees protected by the Order as also specified on the attached map]

SECOND SCHEDULE

Application for consent to cut down, top, lop or uproot trees

1. An application for consent made to the Department shall be in writing containing a statement of reasons for making the application, and specifying, by reference if necessary to a map, the trees or woodland to which the application relates and the operations for which consent is required.

2. The Department may grant consent to an application either unconditionally, or subject to such conditions (including conditions requiring the replacement of any tree or trees) as the Department may think fit, or may refuse consent.

Appeal against refusal of consent

3.—(1) Where an application to the Department for consent is refused or is granted subject to conditions, the applicant, if he is aggrieved by the Department's decision, may by notice under this paragraph appeal to the Planning Appeals Commission.

(2) Any such notice shall be served in writing within six months from the receipt of notification of the decision, or such longer period as the Planning Appeals Commission may allow.

(3) The Planning Appeals Commission, subject to the following provisions of this paragraph, may allow or dismiss the appeal, or reverse or vary any part of the decision, whether the appeal relates to that part thereof or not.

(4) Before determining an appeal the Planning Appeals Commission shall, if either the appellant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the Commission.

Appeal in default of decision

4. Where an application for consent is made to the Department, then unless within two months from the date of its receipt, or within such extended period as may be agreed upon in writing between the applicant and the Department, the Department gives notice to the applicant of its decision on the application, the provisions of paragraph 3 shall apply in relation to the application as if consent had been refused by the Department and as if notification of the Department's decision had been received by the applicant at the end of the said period of two months, or at the end of the said extended period, as the case may be.

Revocation or modification of consent

5.—(1) If it appears to the Department that it is expedient to revoke or modify any consent granted on an application made under paragraph 1, the Department may, subject to sub-paragraphs (2) and (3), by order revoke or modify the consent to such extent as it considers expedient.

(2) Before making such an order the Department shall serve notice on the owner and on the occupier of the land affected and on any other person who in its opinion will be affected by the order.

(3) The power to revoke or modify a consent may be exercised at any time before the operations for which consent has been given have been completed, but any such revocation or modification shall not affect so much of those operations as has been carried out.

Compensation

6. Subject to the provisions of this Order any person who has suffered loss or damage in consequence of—

- (a) any refusal of consent to cut down, uproot, top or lop a tree which is the subject of a Tree Preservation Order; or
- (b) the granting of any such consent subject to conditions,

shall if he makes a claim to the Department within the time and in the manner prescribed by paragraph 9 be entitled subject to such exceptions as may be prescribed to recover from the Department compensation in respect of such loss or damage.

7. No claim may be made under this Order if the amount in respect of which the claim would otherwise have been made is less than £500.

8. No compensation shall be payable to a person:-

- (a) for loss of development value(a) or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the statement of reasons as set out in paragraph 1 and any documents or other evidence submitted in support of any such statement, was not reasonably foreseeable when the consent was refused or was granted subject to conditions; or
- (c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent.

9.—(1) A claim for compensation shall be in writing, stating the reasons for that claim and shall be made by serving it on the Department.

(2) The time within which any such claim shall be made shall be a period of six months from the date of the decision of the Department, or where an appeal has been made to the Planning Appeals Commission against the decision of the Department from the date of the decision of the Commission on the Appeal.

10. The Lands Tribunal shall determine any question of disputed compensation.

NOTE: Any person who, in contravention of the provisions of this Order cuts down, uproots or wilfully destroys a tree, or wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it is guilty of an offence under Article 66 of the Planning (Northern Ireland) Order 1991 and liable on summary conviction to a fine not exceeding £30,000; and on conviction on indictment, to a fine. In determining the amount of fine to be imposed on a person convicted of such an offence the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

Any person who contravenes the provisions of this Order otherwise than as mentioned above, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

THIRD SCHEDULE

This Order shall not apply to require the consent of the Department to:-

1. The cutting down, topping, lopping or uprooting of a tree exempted from the provisions of this Order by Article 65(3) of the Planning (Northern Ireland) Order 1991, namely a tree which is dying or dead or has become dangerous, or the cutting down, topping, lopping or uprooting of which is in compliance with obligations imposed by or under any statutory provision or so far as may be necessary for the prevention or abatement of a nuisance.

2. The cutting down, topping, lopping or uprooting of a tree—

(a) “development value” means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it

- (a) in pursuance of the power conferred on the operator by virtue of section 106 of the Communications Act 2003 and paragraph 19, Schedule 2 to, the Telecommunications Act 1984;
- (b) by a statutory undertaker, (defined as such by Article 2(2) of the Planning (Northern Ireland) Order 1991), or by a person authorised under the Water and Sewerage Services (Northern Ireland) Order 1973 to provide water and sewerage services where the land on which the tree is situated is operational land (within the meaning of the Planning (General Development) Order (Northern Ireland) 1993) of the statutory undertaker or the person authorised under the Water and Sewerage Services (Northern Ireland) Order 1973 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 the person authorised under the Water and Sewerage Services (Northern Ireland) Order 1973; or
 - (iii) to enable the statutory undertaker or the person authorised under the Water and Sewerage Services (Northern Ireland) Order 1973 to carry out development permitted by or under the Planning (General Development) Order (Northern Ireland) 1993;
- (c) where required for the purpose of carrying out development authorised by a planning permission granted on an application made under Part IV of the Planning (Northern Ireland) Order 1991;
- (d) which is a fruit 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;
- (e) where required to enable the implementation of an order made under Articles 4(1), 5(1), 6, 14(1), 15(1), 18(1), and 68(1) of the Roads (Northern Ireland) Order 1993; or
- (f) where that work is urgently necessary for national security purposes.

3. The pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Schedule to the Planning (Trees) Regulations (Northern Ireland) 2003 by removing the requirement for a Tree Preservation Order to be sealed with the Department of the Environment's Seal and to provide instead that such an Order should be signed by an authorised officer of that Department.