

**2015 No. 84**

**PLANNING**

**The Planning (Trees) Regulations (Northern Ireland) 2015**

*Made* - - - - - *26th February 2015*

*Coming into operation* - - - - - *1st April 2015*

The Department of the Environment makes the following Regulations in exercise of the powers conferred on it by sections 122(4), 128 and 247(1) and (6) of the Planning Act (Northern Ireland) 2011(a).

**PART 1**

**GENERAL**

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Planning (Trees) Regulations (Northern Ireland) 2015 and shall come into operation on 1st April 2015.

(2) In these Regulations—

”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.

”electronic communication” has the meaning assigned to it by section 4 of the Electronic Communications Act (Northern Ireland) 2001(b);

”land affected by the order” includes land adjoining the land on which the trees, groups of trees or woodlands to which the order relates are situated;

”order” means a tree preservation order;

”persons interested”, in relation to land affected by an order, means the owners and occupiers of the land;

(3) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being carried out electronically—

(a) the expression “address” includes any number or address used for the purpose of such communications;

(b) references to notices, applications or other documents or to copies of such things include references to such documents or copies of them in electronic form.

(4) Paragraphs (5) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any form, map, notice or other document to any other person (“the recipient”).

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(a) 2011 c.25 (N.I.)

(b) 2001 c.9 (N.I.) as amended by 2003 c.21 (N.I.)

(5) The requirement shall be taken to be fulfilled where the form, map, notice or other document transmitted by means of electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(6) In paragraph (5), “legible in all material respects” means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(7) Where the electronic communication is received by the recipient outside the recipient’s business hours, it shall be taken to have been received on the next working day; and for this purpose “working day” means a day which is not a Saturday, Sunday or a public holiday.

(8) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (5).

(9) In these Regulations any references to sections are references to sections of the Planning Act (Northern Ireland) 2011 unless otherwise stated.

## PART 2

### TREE PRESERVATION ORDERS

#### **Form of tree preservation order**

2.—(1) An order shall be in the form set out in the Schedule and—

- (a) shall specify the trees, groups of trees or woodlands to which it relates;
- (b) where the order relates to a group of trees, shall specify the number of trees in the group; and
- (c) shall indicate the position of the trees, groups of trees or woodlands, as the case may be, by reference to a map.

(2) An order shall contain or be accompanied by the map referred to in paragraph (1)(c); and where a map so accompanies an order it shall be treated as part of that order.

(3) The map contained in, or accompanying, an order shall be prepared to a scale sufficient to give a clear indication of the position of the trees, groups of trees or woodlands to which the order relates.

#### **Procedure after making an order**

3.—(1) As soon as practicable after making an order, and before confirming it, the council shall—

- (a) serve on the persons interested in the land affected by the order—
  - (i) a copy of the order; and
  - (ii) a notice containing the particulars mentioned in paragraph (2); and
- (b) make a copy of the order available for public inspection, in accordance with paragraph (3).

(2) The particulars mentioned in this paragraph are—

- (a) the reasons for making the order;
- (b) a statement that objections or other representations with respect to any trees, groups of trees or woodlands specified in the order may be made to the council in accordance with regulation 4;
- (c) the date, being at least 28 days after the date of the notice, by which any objection or representation must be received by the council;

- (d) a copy of regulation 4; and
- (e) where the order contains a direction under section 123 (provisional tree preservation orders), a statement of the effect of that direction.

(3) Subject to regulations 6(c), 7(c) and 8(1)(c), a copy of the order shall be made available for public inspection in the locality in which the land to which the order relates is situated at all reasonable hours.

### **Objections and representations**

4. Objections and representations—
- (a) shall be made in writing and delivered so as to arrive with the council not later than the date specified under regulation 3(2)(c);
  - (b) shall specify the particular trees, groups of trees or woodlands (as the case may be) in respect of which the objections or representations are made; and
  - (c) in the case of an objection, shall state the reasons for the objection.

### **Procedure for confirmation of a tree preservation order**

5.—(1) Where the council, after it has considered objections and representations duly made in respect of it and not withdrawn, decides to confirm an order, it may do so with or without modification.

(2) Where an order is confirmed it shall be endorsed to that effect, and the endorsement shall also indicate—

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

(3) Where an order is confirmed with modifications, the modifications shall be indicated in the order.

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

6. As soon as practicable after confirming an order, the council shall—
- (a) notify the persons interested in the land affected by the order—
    - (i) of the confirmation of the order; and
    - (ii) of the date on which the order was confirmed;
  - (b) where the order was confirmed with modifications, send a copy of the order, as confirmed, to those persons; and
  - (c) make a copy of the order, as confirmed, available for public inspection, in place of the copy made so available in accordance with regulation 3(3).

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

7. Where the council decides not to confirm an order it shall as soon as practicable—
- (a) endorse the order with a statement to that effect and with the date of its decision;
  - (b) notify the persons interested in the land affected by the order of its decision; and
  - (c) withdraw from public inspection the copy of the order made available in accordance with regulation 3(3).

### **Revocation of tree preservation orders**

- 8.—(1) Where the council revokes an order it shall—

- (a) endorse the original order with a statement to the effect that the order has been revoked, specifying the date of the revocation order;
  - (b) serve a copy of the revocation order on the persons interested in the land affected by the order; and
  - (c) withdraw from public inspection the copy of the original order made available in accordance with regulation 3(3).
- (2) A revocation order shall contain a statement of the date on which it was made.

## PART 3

### TREES IN CONSERVATION AREAS

#### **Trees in conservation areas—exemptions**

- 9.**—(1) Section 127 (preservation of trees in conservation areas) shall not apply to—
- (a) the cutting down, uprooting, topping or lopping of a tree in the circumstances mentioned in section 122(5) (tree preservation orders: councils) or in Schedule 3 of the prescribed form of tree preservation order set out in the Schedule;
  - (b) the cutting down or uprooting—
    - (i) of a tree whose diameter does not exceed 75 millimetres; or
    - (ii) where carried out for the sole purpose of improving the growth of other trees, of a tree whose diameter does not exceed 100 millimetres; or
  - (c) the topping or lopping of a tree whose diameter does not exceed 75 millimetres.
- (2) For the purpose of this regulation—
- (a) where a tree has more than one stem at a point 1.5 metres above the natural ground level its diameter shall be treated for the purposes of paragraph (9)(b)(i) and (c) or paragraph (9)(b)(ii) as exceeding 75 millimetres or 100 millimetres respectively, if any stem when measured over its bark at that point exceeds 75 millimetres or 100 millimetres respectively; and
  - (b) in any other case, the diameter of a tree shall be ascertained by measurement, over the bark of the tree, at a point 1.5 metres above the natural ground level.

#### **Use of electronic communications**

- 10.**—(1) Paragraph (2) applies where a person uses electronic communications for any of the following purposes—
- (a) making objections and representations under regulation 4;
  - (b) applying for consent to cut down, uproot, top or lop trees in accordance with Part 2 of Schedule 4;
  - (c) serving notice of appeal on the planning appeals commission against the refusal of consent or the granting of consent subject to conditions under Part 2 of Schedule 4 or serving notice of appeal in default of decision under that Schedule;
  - (d) serving a claim for compensation on the council under Part 2 of Schedule 4.
- (2) In the case to which this paragraph applies, and except where a contrary intention appears, the person making the objection and representation, application, appeal or claim shall be taken to have agreed—
- (a) to the use of electronic communications for all purposes relating to the objection and representation, application, appeal or claim (as the case may be) which are capable of being effected using such communications;

- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the objection and representation, application or claim;
  - (c) that the person's deemed agreement under this paragraph shall subsist until he gives notice in writing that he wishes to revoke the agreement and such withdrawal or revocation shall be final and shall take effect on a date specified by him in the notice but not less than seven days after the date on which the notice is given.
- (3) In this regulation "Schedule 4" means Schedule 4 of the Schedule (form of tree preservation order).

## PART 4

### REVOCATION AND TRANSITIONAL PROVISIONS

#### **Revocation and transitional provisions**

- 11.—**(1) The Planning (Trees) Regulations (Northern Ireland) 2003(a) are revoked.
- (2) Where before the commencement of these Regulations the Department made or confirmed any order, that order shall be treated as having been made or confirmed by the appropriate council.
- (3) Anything which before the commencement of the Regulations was in the process of being done by, to or in relation to the Department in connection with any of the functions mentioned in paragraph (4) shall be treated as having been done by, to or in relation to the appropriate council.
- (4) The functions mentioned in this paragraph are—
- (a) the making and confirmation of an order;
  - (b) the revocation of an order;
  - (c) the determination of an application for any consent required under an order and any appeal against that decision to the planning appeals commission; and
  - (d) the making of any claims for compensation under any order.
- (5) Section 59 (matters which may be raised in an appeal under section 58) as modified by the Schedule does not apply to an appeal made to the planning appeals commission before the commencement of these Regulations which is not determined at that date.
- (6) In this regulation "appropriate council" means the council in whose district the land on which the trees, groups of trees or woodlands to which the order relates is situated.
- (7) Nothing in this regulation shall affect the generality of section 29(3)(a) of the Interpretation Act (Northern Ireland) 1954(b).

Sealed with the Official Seal of the Department of the Environment on 26th February 2015.



*Angus Kerr*  
A senior officer of the  
Department of the Environment

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(a) S.R. 2003 No 444  
(b) 1954 c.33 (N.I.)

## SCHEDULE

Regulation 2(1)

### FORM OF TREE PRESERVATION ORDER THE PLANNING ACT (NORTHERN IRELAND) 2011 THE PLANNING (TREES) REGULATIONS (NORTHERN IRELAND) 2015 TREE PRESERVATION ORDER

at

*(address of the land)*

[name of council](in this Order called “the Council”) in exercise of the powers conferred upon it by sections 122, 123 and 183(1) of the Planning Act (Northern Ireland) 2011(a) makes the following order:

No person shall, except with the consent of the Council and in accordance with the conditions, if any, imposed on such consent, cut down, uproot, top, lop, wilfully damage or wilfully destroy or cause or permit the cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of any tree specified in Schedule 1 or comprised in a group of trees or in a woodland specified in that Schedule, the position of which trees, groups of trees or woodlands is defined in the manner indicated in Schedule 1 on the annexed maps which maps shall for the purpose of such definition prevail where any ambiguity arises between them and the specification in Schedule 1.

(The Council directs that section 123 (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 Schedule 2 and to the exemptions specified in Schedule 3.

Authorised by [name of council] to sign on behalf on [insert date].

## SCHEDULE 1

*[particulars of trees protected by the Order as also specified on the attached map.]*

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(a)2011 c.25 (N.I.)

## SCHEDULE 2

### **Application of provisions of the Planning Act (Northern Ireland) 2011**

1.-(1) The provisions of sections 40, 58, 59, 60, 68, of the 2011 Act specified in column 1 of Part 1 of Schedule 4 of this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column 2.

(2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part 2 of that Schedule.

### **Compensation**

2. 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 they make a claim to the council within the time and in the manner prescribed by paragraph 5 be entitled subject to such exceptions as may be prescribed to recover from the council compensation in respect of such loss or damage.

3. 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.

4. No compensation shall be payable to a person:

- (a) for loss of development value 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 (5)(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 or her failure to take reasonable steps to avert the loss or damage or to mitigate its extent.

5.-(1) A claim for compensation shall be in writing, stating the reasons for that claim and shall be made by serving it on the council.

(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 council, or where an appeal has been made to the planning appeals commission against the decision of the council from the date of the decision of the commission on the appeal.

6. 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 section 126 (penalties for contravention of tree preservation orders) of the Planning Act (Northern Ireland) 2011 and liable on summary conviction to a fine not exceeding £100,000; 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 must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person 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.

## SCHEDULE 3

This Order shall not apply to require the consent of the council to:—

1. The cutting down, uprooting, topping or lopping of a tree exempted from the provisions of this Order by section 122(5) of the Planning Act (Northern Ireland) 2011 namely a tree which is dead or has become dangerous, or the cutting down, uprooting, topping or lopping 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, uprooting, topping or lopping of a tree—

(a) in pursuance of the power conferred on the operator by virtue of section 106 of the Communications Act 2003(a) and paragraph 19 of Schedule 2 to the Telecommunications Act 1984(b);

(b) by a statutory undertaker (defined as such by Section 250 of the Planning Act (Northern Ireland) 2011), where the land on which the tree is situated is operational land (as defined in the Planning (General Permitted Development) Order (Northern Ireland) 2015(c)) 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 permitted by or under the Planning (General Permitted Development) Order (Northern Ireland) 2015;

(c) where required for the purpose of carrying out development authorised by a planning permission granted (other than an outline planning permission) on an application made under Part 3 of the Planning Act (Northern Ireland) 2011;

(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(d) 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.

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(a) 2003 c. 21

(b) 1984 c. 12

(c) S.R. 2015 no.70

(d) 1993 No. 3160 (N.I.15)

## SCHEDULE 4

### PART 1

#### Adaptation of sections 40, 58, 59, 60 and 68 of the Planning Act (Northern Ireland) 2011

Column 1: Provision of the 2011 Act	Column 2: Adaptation or Modification
Section 40	Substitute this section with- “Application for consent to cut down, uproot, top or lop trees 40.-(1) An application for consent made to the council 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 council 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 council may think fit, or may refuse consent.”
Section 58(1)	Omit “-” and “(a)” For the words “planning permission to develop land” substitute “consent under a tree preservation order”. Omit paragraphs (b) and (c). For the words “permission, consent, agreement or approval” substitute “consent”.
Section 58(2)	Omit.
Section 58(3)	For the number “(3)” substitute “(2)”.
Section 58(4)	For the number “(4)” substitute “(3)”.
Section 58(5)	Omit the words “,subject to subsections (5) to (7),”. Substitute this subsection with— “(4) Where an appeal is brought under this section, the commission must afford both the appellant and the council the opportunity of— (a) appearing before and being heard by the commission; or (b) submitting to the commission a written statement within such period and in respect of such matters as the commission may specify to them by notice in writing.”
Section 58(6)	For the number “(6)” substitute “(5)”.
Section 58(7)	Omit.
Section 59(1)	Omit the words “or as the case may be, the Department”.
Section 60	After the words “section 58(1)” insert the words “as applied and modified by the Planning (Trees) Regulations (Northern Ireland) 2015”.

Section 68

Omit the words “either—”, “(a)”, and “; or” in paragraph (a).

Omit paragraph (b).

Omit paragraph (c).

For subparagraphs “(i)” and “(ii)” substitute “(a)” and “(b)” and for the words “permission, consent, agreement or approval” substitute “consent”.

In the title omit the words “planning permission” and substitute “consent under a tree preservation order”.

Substitute the section with the following-

“(1) If it appears to a council that it is expedient to revoke or modify any consent under a tree preservation order, the council may, subject to subsections (3), (4) and (5) by order revoke or modify the consent to such extent as it considers expedient.

(2) Without prejudice to the generality of subsection (1), a council may have regard to any material change in circumstances that has occurred since the consent was granted.

(3) The power conferred by this section to revoke or modify consent under a tree preservation order 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.

(4) Where the council makes an order under this section it must serve a notice on-

(a) the person who applied for the consent;

(b) the owner and occupier of the land affected; and

(c) any other person who, in its opinion, would be affected by the order.

(5) An order under this section shall take effect on the day after that on which the council complies with the requirements of subsection (4).”

## PART 2

Sections 40, 58, 59, 60 & 68 of the Planning Act (Northern Ireland) 2011 as adapted or modified

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

**40.**-(1) An application for consent made to the council 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 council 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 council may think fit, or may refuse consent.

### **Appeals**

**58.**-(1) Where an application is made to a council for consent under a tree preservation order then if that consent is refused or is granted subject to conditions, the applicant may by notice in writing appeal to the planning appeals commission.

(2) Any notice under this section must be served on the planning appeals commission within 4 months from the date of notification of the decision to which it relates or such other period as may be specified by development order.

(3) Where an appeal is brought under this section from a decision of a council, the planning appeals commission may allow or dismiss the appeal or may reverse or vary any part of the decision whether the appeal relates to that part thereof or not and may deal with the application as if it had been made to it in the first instance.

(4) Where an appeal is brought under this section, the commission must afford both the appellant and the council the opportunity of—

- (a) appearing before and being heard by the commission; or
- (b) submitting to the commission a written statement within such period and in respect of such matters as the commission may specify to them by notice in writing.

(5) If at any time before or during the determination of an appeal under this section it appears to the planning appeals commission that the appellant is responsible for undue delay in the progress of the appeal, it may—

- (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
- (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.

### **Matters which may be raised in an appeal under section 58**

**59.**-(1) In an appeal under section 58, a party to the proceedings is not to raise any matter which was not before the council at the time the decision appealed against was made unless that party can demonstrate to the satisfaction of the planning appeals commission—

- (a) that the matter could not have been raised before that time, or
- (b) that its not being raised before that time was a consequence of exceptional circumstances.

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—

- (a) the provisions of the local development plan, or
- (b) any other material consideration.

### **Appeal against failure to take planning decision**

**60.** Where any such application as is mentioned in section 58(1) as applied and modified by the Planning (Trees) Regulations (Northern Ireland) 2015 is made to a council, then unless within such period as may be specified by a development order, or within such extended period as may be agreed upon in writing between the applicant and the council, the council gives notice to the applicant of its decision on the application, section 58 shall apply in relation to the application-

- (a) as if the consent to which it relates had been refused by the council; and
- (b) as if notification of the council's decision had been received by the applicant at the end of the period so specified, or at the end of the said extended period, as the case may be.

### **Revocation or modification of consent under a tree preservation order by council**

**68.**-(1) If it appears to a council that it is expedient to revoke or modify any consent under a tree preservation order, the council may, subject to subsections (3), (4) and (5) by order revoke or modify the consent to such extent as it considers expedient.

(2) Without prejudice to the generality of subsection (1), a council may have regard to any material change in circumstances that has occurred since the consent was granted.

(3) The power conferred by this section to revoke or modify consent under a tree preservation order 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.

(4) Where the council makes an order under this section it must serve a notice on-

- (a) the person who applied for the consent;
- (b) the owner and occupier of the land affected; and
- (c) any other person who, in its opinion, would be affected by the order.

(5) An order made under this section shall take effect on the day after that on which the council complies with the requirements of subsection (4).

## **EXPLANATORY NOTE**

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

These Regulations replace the Planning (Trees) Regulations (Northern Ireland) 2003.

A regulatory impact assessment has been prepared in relation to these Regulations. A copy may be obtained from the Department of the Environment, Causeway Exchange, 1-7 Bedford Street, Town Parks, Belfast, BT2 7EG or accessed at [www.doeni.gov.uk](http://www.doeni.gov.uk).

The Explanatory Memorandum is available alongside the Regulations on the government's website [www.legislation.gov.uk](http://www.legislation.gov.uk).

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