

F1 SCHEDULE

Regulation 2(1)

Textual Amendments

F1 Sch. form: Sch. 3 para. 2(a) substituted (28.12.2017) by The Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Secondary Legislation) Regulations 2017 (S.I. 2017/1011), regs. 1(1), **Sch. 3 para. 10(2)**

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) make 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 specifications in Schedule 1.

(The Council directs that section 122 (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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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.

Changes to legislation: There are currently no known outstanding effects for the *The Planning (Trees) Regulations (Northern Ireland) 2015, SCHEDULE.* (See end of Document for details)

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.

(a) 2003 c. 23
 (b) 1984 c. 12
 (c) S. 2015 No. 39
 (d) 1993 No. 216(S.13)

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.” For the number “(6)” substitute “(5)”.
Section 58(6)	Omit.
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”.

Changes to legislation: There are currently no known outstanding effects for the *The Planning (Trees) Regulations (Northern Ireland) 2015, SCHEDULE.* (See end of Document for details)

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".
Section 68 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) is 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).

Changes to legislation:

There are currently no known outstanding effects for the The Planning (Trees) Regulations (Northern Ireland) 2015, SCHEDULE.