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STATUTORY INSTRUMENTS

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**2008 No. 2260**

**TOWN AND COUNTRY PLANNING, ENGLAND**

The Town and Country Planning (Trees)  
(Amendment) (England) Regulations 2008

<i>Made</i>	- - - -	<i>21st August 2008</i>
<i>Laid before Parliament</i>		<i>29th August 2008</i>
<i>Coming into force</i>	- -	<i>1st October 2008</i>

The Secretary of State, in exercise of the powers conferred by sections 198(8), 199(2) and (3), 323 and 333(1) of the Town and Country Planning Act 1990<sup>(1)</sup>, makes the following Regulations:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008 and shall come into force on 1st October 2008.

(2) These Regulations apply in relation to—

- (a) applications and appeals made on or after 1st October 2008; and
- (b) England only.

**Amendment of the Town and Country Planning (Trees) Regulations 1999**

2. The Town and Country Planning (Trees) Regulations 1999<sup>(2)</sup> are amended in accordance with the following provisions of these Regulations.

3. After regulation 9 insert—

“PART 2A

APPLICATIONS FOR CONSENT UNDER TREE PRESERVATION ORDERS

**Applications for consent under tree preservation order**

9A.—(1) Subject to the following provisions of this regulation, an application for consent to the cutting down, topping, lopping or uprooting of any tree in respect of which an order is for the time being in force shall—

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(1) 1990 c.8. Section 198(8) was inserted by section 42(3) of the [Planning and Compulsory Purchase Act 2004 \(c.5\)](#).  
(2) [S.I. 1999/1892](#) to which there are amendments not relevant to this instrument.

- (a) be made in writing to the authority—
    - (i) on a form published by the Secretary of State for the purpose of proceedings under these Regulations; or
    - (ii) where the authority has consented to applications being made electronically, on a form published electronically by the Secretary of State and provided to the applicant using electronic communication for that purpose;
  - (b) include the particulars specified in the form;
  - (c) be accompanied, whether electronically or otherwise, by—
    - (i) a plan which identifies the tree or trees to which the application relates;
    - (ii) such information as is necessary to specify the work for which consent is sought;
    - (iii) a statement of the applicant’s reasons for making the application; and
    - (iv) appropriate evidence describing any structural damage to property or in relation to tree health or safety, as applicable.
- (2) Where an application is made using electronic communication, the applicant shall be taken to have agreed—
- (a) to the use of such communication by the authority for the purposes of his application;
  - (b) that his address for those purposes is the address incorporated into, or otherwise logically associated with, his application; and
  - (c) that his deemed agreement under this paragraph shall subsist until he gives notice in writing—
    - (i) withdrawing any address notified to the authority for that purpose; or
    - (ii) revoking that deemed agreement,and such withdrawal or revocation shall be final and shall take effect on the date specified by the person in the notice being not less than seven days after the date on which the notice is given.”.
4. In the Schedule (form of tree preservation order)—
- (a) omit article 6 (applications for consent under the order); and
  - (b) in article 9(4)(b) for the words “statement of reasons” to “such statement” substitute “application and the documents and particulars accompanying it”.
5. For Part 4 of the Regulations (appeals to be disposed of on the basis of written representations and other documents) substitute—

## “PART 4 APPEALS

### **Application of Part 4 and interpretation**

- 11.—(1) This Part applies in relation to every appeal—
- (a) under section 78 as applied to applications under orders (“a tree preservation order appeal”); or
  - (b) against a notice served under section 207(1) (“a tree replacement notice appeal”),

which is to be disposed of without a hearing or inquiry to which rules under section 9 (procedure in connection with statutory inquiries) of the Tribunals and Inquiries Act 1992(3) apply, where that appeal is made on or after the date on which these Regulations come into force.

(2) In this Part—

“appointed person” means a person appointed by the Secretary of State under Schedule 6 to the Town and Country Planning Act 1990 to determine an appeal;

“parties” in relation to an appeal, means the appellant and the relevant authority;

“preliminary information” means the documents supplied by the relevant authority in accordance with regulation 13;

“questionnaire” means a document in the form supplied by the Secretary of State for the purposes of this Part;

“relevant authority” in relation to an appeal, means the local planning authority that made the decision (including any failure to determine the application) or served the notice which is the subject of the appeal.

### **Notice of appeal**

**12.** The appellant shall, at the same time as he gives written notice to the Secretary of State of a tree preservation order appeal or a tree replacement notice appeal, send to the relevant authority a copy of the notice of appeal.

### **Preliminary information**

**13.** The relevant authority shall, as soon as practicable after receiving notification of an appeal, send copies of the following to the Secretary of State—

(a) in the case of a tree preservation order appeal—

(i) the application for consent, where relevant;

(ii) the decision of the relevant authority, if any, including any condition, certificate or direction made by the authority in relation to the decision.

(b) in the case of a tree replacement notice appeal—

(i) the notice issued under section 207(1);

(ii) where the notice has been issued following a failure to plant replacement trees under a condition of consent, the original application and consent;

(iii) where the notice has been issued as a result of the breach of an order under section 206(1)(a) (removal, uprooting or destruction of tree in contravention of tree preservation order), the date of that breach, if not included in the notice;

(iv) where the notice has been issued as a result of a failure to replace a protected tree removed under the exemption in section 206(1)(b) (dying, dead or dangerous trees), the date of the alleged failure, if not included in the notice.

### **Questionnaire**

**14.—(1)** The Secretary of State shall, as soon as practicable after receipt of the preliminary information, supply a questionnaire to the relevant authority.

(2) The relevant authority shall, within such period as the Secretary of State may specify in writing, being not less than 21 days from the date on which the questionnaire was supplied, submit to her and copy to the appellant a completed questionnaire.

(3) The questionnaire shall state the date on which it is submitted to the Secretary of State.

#### **Further information**

**15.**—(1) The Secretary of State or the appointed person (as the case may be) may in writing require the parties to provide such further information, including any representations, relevant to the appeal as she may specify.

(2) Such information must be provided in writing within such period as the Secretary of State or the appointed person may specify.

#### **Decision**

**16.** Where under regulation 15 information is required to be provided within a specified period, the Secretary of State or the appointed person (as the case may be) may proceed to a decision on an appeal taking into account only such information as has been submitted within the specified period.

#### **Electronic communications**

**17.** Where an appeal is made using electronic communications, the appellant shall be taken to have agreed—

- (a) to the use of such communications by the Secretary of State for the purposes of his appeal;
- (b) that his address for that purpose is the address incorporated into, or otherwise logically associated with, his appeal; and
- (c) that his deemed agreement under this paragraph shall subsist until he gives notice in writing—
  - (i) withdrawing any address notified to the Secretary of State for that purpose; or
  - (ii) revoking that deemed agreement,

and such withdrawal or revocation shall be final and shall take effect on the date specified by the person in the notice being not less than seven days after the date on which the notice is given.”.

Signed by authority of the Secretary of State

21st August 2008

*Kay Andrews*  
Parliamentary Under Secretary of State  
Department for Communities and Local  
Government

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## EXPLANATORY NOTE

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

The Town and Country Planning (Trees) Regulations 1999 (“the 1999 Regulations”) make provision, among other things, for the form of tree preservation orders and for applications for consent to carry out work on trees subject to an order.

Regulation 3 of these Regulations inserts a new regulation 9A into the 1999 Regulations to make provision for the form and content of applications for consent. Consequential amendments are made to the Schedule to the 1999 Regulations by regulation 4.

Regulation 5 of these Regulations substitutes a new Part 4 of the 1999 Regulations to provide new procedures for appeals without a hearing or inquiry under section 78 of the Town and Country Planning Act 1990, as applied under tree preservation orders and to appeals against tree replacement notices under section 208.

An impact assessment was prepared in relation to these Regulations. This assessment has been placed in the library of each House of Parliament and copies may be obtained from Natural Environment and Open Space, Department for Communities and Local Government, Eland House, Bressenden Place, London SW1E 5DU (telephone 020 7944 5623).