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STATUTORY INSTRUMENTS

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**2003 No. 430**

**The Planning (Amendment) (Northern Ireland) Order 2003**

*Control over particular matters*

**Advertisements**

- 24.** In Article 2(2) of the principal Order (interpretation) in the definition of “advertisement”—
- (a) after “notice,” there is inserted “awning, blind,”;
  - (b) after “used,” there is inserted “or designed”; and
  - (c) after “use” there is inserted “and anything else principally used, or designed or adapted principally for use”.

**Building preservation notices**

- 25.—(1)** After Article 42 of the principal Order (list of buildings of special architectural or historic interest) there is inserted—

**“Temporary listing: building preservation notices**

- 42A.—(1)** If it appears to the Department that a building which is not a listed building—
- (a) is of special architectural or historic interest; and
  - (b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest,

it may serve on the owner and occupier of the building a notice (in this Order referred to as a “building preservation notice”).

- (2) A building preservation notice served by the Department shall—
  - (a) state that the building appears to the Department to be of special architectural or historic interest and that it is considering including it in a list compiled under Article 42; and
  - (b) explain the effect of paragraphs (3) to (5) and Article 42C.
- (3) A building preservation notice—
  - (a) shall come into force as soon as it has been served on both the owner and occupier of the building to which it relates; and
  - (b) subject to paragraph (4), shall remain in force for 6 months from the date when it is served or, as the case may be, last served.
- (4) A building preservation notice shall cease to be in force if the Department—
  - (a) includes the building in a list compiled under Article 42, or
  - (b) notifies the owner and the occupier of the building to which the notice relates in writing that it does not intend to do so.

(5) While a building preservation notice is in force with respect to a building, the provisions of this Order (other than Article 49) shall have effect in relation to the building as if it were a listed building.

(6) Following a notification by the Department under paragraph (4)(b) no further building preservation notice in respect of the building shall be served by the Department within the period of 12 months beginning with the date of the notification.

#### **Temporary listing in urgent cases**

**42B.**—(1) If it appears to the Department to be urgent that a building preservation notice should come into force, it may, instead of serving the notice on the owner and occupier of the building, affix the notice conspicuously to some object on the building.

(2) The affixing of a notice under paragraph (1) shall be treated for all the purposes of Article 42A, this Article, Article 42C and Articles 45 to 47 and Schedule 1 as service of the notice.

(3) A notice which is so affixed must explain that by virtue of being so affixed it is treated as being served for those purposes.

#### **Lapse of building preservation notices**

**42C.**—(1) This Article applies where a building preservation notice ceases to be in force by virtue of—

- (a) the expiry of the 6 month period mentioned in paragraph (3)(b) of Article 42A; or
- (b) the service of a notification by the Department under paragraph (4)(b) of that Article.

(2) The fact that the notice has ceased to be in force shall not affect the liability of any person to be prosecuted and punished for an offence under Article 44 or 72 (as applied by Article 77(6)) committed with respect to the building while it was in force.

(3) Any proceedings on or arising out of an application for listed building consent with respect to the building made while the notice was in force and any such consent granted while it was in force shall lapse.

(4) Any listed building enforcement notice served by the Department while the building preservation notice was in force shall cease to have effect.

(5) Any proceedings relating to a listed building enforcement notice served by the Department while the building preservation notice was in force under Articles 77 and 78 shall lapse.

(6) Notwithstanding paragraph (4), Article 74(1) and (2) (as applied by Article 77(6)) shall continue to have effect as respects any expenses incurred by the Department, owner or occupier as mentioned in that Article and with respect to any sums paid on account of such expenses.”.

(2) In paragraph (1)(d) of Article 121 of that Order (rights of entry) after “of” there is inserted “affixing a notice in accordance with Article 42B(1) or”.

(3) After Article 67 of the Planning (Northern Ireland) Order 1972 (compensation for loss due to stop notice) there is inserted—

#### **“Compensation for loss or damage caused by service of building preservation notice**

**67A.**—(1) This Article applies where a building preservation notice ceases to have effect without the building having been included in a list compiled by the Department under Article 42 of the Planning Order.

(2) Any person who at the time when the notice was served had an estate in the building shall, on making a claim to the Department within the prescribed time and in the prescribed manner, be entitled to be paid compensation by the Department in respect of any loss or damage directly attributable to the effect of the notice.

(3) The loss or damage in respect of which compensation is payable under paragraph (2) shall include a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect to it.”.

## **Trees**

**26.**—(1) In Article 65 of the principal Order (tree preservation orders)—

(a) in paragraph (1)(a) after “lopping” there is inserted “, uprooting, wilful damage”;

(b) after paragraph (1) there is inserted—

“(1A) A tree preservation order may be made so as to apply, in relation to trees to be planted pursuant to any such conditions as are mentioned in Article 64(a), as from the time when those trees are planted.

(1B) A tree preservation order shall not take effect until it is confirmed by the Department and the Department may confirm any such order either without modification or subject to such modifications as it considers expedient.”;

(c) for paragraph (2) there is substituted—

“(2) The Department may make regulations as to the form of tree preservation orders and the procedure to be followed in connection with the making and confirmation of such orders; and the regulations may, in particular, make provision as follows—

(a) that, before a tree preservation order is confirmed by the Department, notice of the making of the order shall be given to the owners and occupiers of land affected by the order and to such other persons, if any, as may be specified in the regulations;

(b) that objections and representations with respect to the order, if duly made in accordance with the regulations, shall be considered before the order is confirmed by the Department; and

(c) that copies of the order, when confirmed by the Department, shall be served on such persons as may be specified in the regulations.”;

(d) in paragraph (3), after the words “cutting down,”, where they twice appear, there is inserted “uprooting,”.

(2) After that Article there is inserted—

### **“Provisional tree preservation orders**

**65A.**—(1) If it appears to the Department that a tree preservation order proposed to be made by it should take effect immediately without previous confirmation, it may include in the order as made by it a direction that this Article shall apply to the order.

(2) Notwithstanding Article 65(1), an order which contains such a direction—

(a) shall take effect provisionally on such date as may be specified in it; and

(b) shall continue in force by virtue of this Article until—

(i) the expiration of a period of 6 months beginning with the date on which the order was made; or

- (ii) the date on which the order is confirmed,  
whichever first occurs.

### **Replacement of trees**

**65B.**—(1) If any tree in respect of which a tree preservation order is for the time being in force—

- (a) is removed, uprooted or destroyed in contravention of the order; or
- (b) except in the case of a tree to which the order applies as part of a woodland, is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of Article 65 on the grounds that it is dying or dead or has become dangerous,

it shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.

(2) The duty imposed by paragraph (1) does not apply to an owner if on application by him the Department dispenses with it.

(3) In respect of trees in a woodland it shall be sufficient for the purposes of this Article to replace the trees removed, uprooted or destroyed by planting the same number of trees—

- (a) on or near the land on which the trees removed, uprooted or destroyed stood; or
- (b) on such other land as may be agreed between the Department and the owner of the land,

and in such places as may be designated by the Department.

(4) In relation to any tree planted pursuant to this Article, the relevant tree preservation order shall apply as it applied to the original tree.

(5) The duty imposed by paragraph (1) on the owner of any land shall attach to the person who is from time to time the owner of the land.”.

(3) In Article 66 of the principal Order (penalties for contravention of tree preservation orders)—

(a) in paragraph (1)—

- (i) after the words “cuts down” there is inserted “, uproots”;
- (ii) after the words “a tree, or” there is inserted “wilfully damages,”;
- (iii) for the words “and liable” to the end of that paragraph there is substituted—

“and liable—

- (a) on summary conviction, to a fine not exceeding £30,000;
- (b) on conviction on indictment, to a fine.”;

(b) after paragraph (1) there is inserted—

“(1A) In determining the amount of any fine to be imposed on a person convicted of an offence under paragraph (1), 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.”;

(c) in paragraph (2) for the words “level 3” there is substituted “level 4”;

(d) paragraph (3) is omitted.

(4) After that Article there is inserted—

#### **“Preservation of trees in conservation areas**

**66A.**—(1) Subject to the provisions of this Article and Article 66B, any person who, in relation to a tree to which this Article applies, does any act which might by virtue of Article 65(1)(a) be prohibited by a tree preservation order shall be guilty of an offence.

(2) Subject to Article 66B, this Article applies to any tree in a conservation area in respect of which no tree preservation order is for the time being in force.

(3) It shall be a defence for a person charged with an offence under paragraph (1) to prove—

(a) that he served notice of his intention to do the act in question (with sufficient particulars to identify the tree) on the Department; and

(b) that he did the act in question—

(i) with the consent of the Department; or

(ii) after the expiry of the period of 6 weeks from the date of the notice but before the expiry of the period of 2 years from that date.

(4) Article 66 shall apply to an offence under this Article as it applies to a contravention of a tree preservation order.

#### **Power to disapply Article 66A**

**66B.**—(1) The Department may by regulations direct that Article 66A shall not apply in such cases as may be specified in the regulations.

(2) Regulations under paragraph (1) may, in particular, be framed so as to exempt from the application of that Article cases defined by reference to all or any of the following matters—

(a) acts of such descriptions or done in such circumstances or subject to such conditions as may be specified in the regulations;

(b) trees in such conservation areas as may be so specified;

(c) trees of a size or species so specified; or

(d) trees belonging to persons or bodies of a description so specified.

(3) Regulations under paragraph (1) may, in particular, exempt from the application of Article 66A cases exempted from Article 65 by paragraph (3) of that Article.”.

(5) In Article 115 of the principal Order (tree preservation orders in anticipation of disposal of Crown land)—

(a) for paragraph (2) there is substituted—

“(2) A tree preservation order made by virtue of this Article shall not take effect until the first occurrence of a relevant event.

(2A) For the purposes of paragraph (2), a relevant event occurs in relation to any land if it ceases to be Crown land or becomes subject to a private estate.

(2B) A tree preservation order made by virtue of this Article—

(a) shall not require confirmation under Article 65 until after the occurrence of the event by virtue of which it takes effect; and

(b) shall by virtue of this paragraph continue in force until—

(i) the expiration of the period of 6 months beginning with the occurrence of that event; or

(ii) the date on which the order is confirmed, whichever first occurs.”;

- (b) in paragraph (3) for the words “On the occurrence of any event by virtue of which” there is substituted “Where”.
- (6) In Article 66 of the [Planning \(Northern Ireland\) Order 1972 \(NI 17\)](#) (compensation in respect of tree preservation orders)—
  - (a) for paragraph (1) there is substituted—
    - “(1) A tree preservation order may make provision for the payment by the Department, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of loss or damage caused or incurred in consequence—
      - (a) of the refusal of any consent required under the order; or
      - (b) of the grant of any such consent subject to conditions.”;
  - (b) for paragraph (3) there is substituted—
    - “(3) Except in so far as may be otherwise provided by any tree preservation order, any question of disputed compensation under paragraph (1) shall be referred to and determined by the Lands Tribunal.”.