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STATUTORY INSTRUMENTS

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**1999 No. 1892**

**TOWN AND COUNTRY PLANNING,  
ENGLAND AND WALES**

**The Town and Country Planning (Trees) Regulations 1999**

<i>Made</i>	- - - -	<i>30th June 1999</i>
<i>Laid before Parliament</i>		<i>8th July 1999</i>
<i>Coming into force</i>	- -	<i>2nd August 1999</i>

The Secretary of State for the Environment, Transport and the Regions, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred by sections 199(2) and (3), 212, 316(1), 323, and 333(1) of the Town and Country Planning Act 1990<sup>(1)</sup>, and of all other powers enabling them in that behalf, hereby make the following Regulations:

**PART I  
GENERAL**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Town and Country Planning (Trees) Regulations 1999 and shall come into force on 2nd August 1999.

(2) In these Regulations, unless the context otherwise requires—

“authority” means a local planning authority<sup>(2)</sup> making, or having functions under, an order;

“land affected by the order” includes any 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;

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(1) 1990 c. 8. Amendments relevant to these Regulations were made by the Planning and Compensation Act 1991 (c. 34), section 23(6).

(2) See, as to Greater London and metropolitan areas, section 1(2) of the Town and Country Planning Act 1990; as to non-metropolitan areas, section 1(1) of, and paragraph 13(1) of Schedule 1 to, that Act; as to National Parks, section 4A of that Act (which was inserted by section 67 of the Environment Act 1995 (c. 25)), S.I. 1995/2803 and 1996/1243 (to which there are amendments not relevant to these Regulations) and, as to the Broads, section 5 of the Town and Country Planning Act 1990.

“person interested”, in relation to land affected by an order, means every owner and occupier of the land and every other person whom the authority know to be entitled to fell any of the trees to which the order relates or to work by surface working any materials in, on or under the land; and any reference in these Regulations to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990.

## PART II

### TREE PRESERVATION ORDERS

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

**2.—**(1) An order shall be in the form set out in the Schedule to these Regulations, or in a form substantially to the same effect 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 have annexed to it the map referred to in paragraph (1)(c); and where a map is annexed to an order it shall be treated as part of the order.

(3) The map contained in, or annexed to, 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 authority which made it 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 authority 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 authority;
- (d) a copy of regulation 4; and
- (e) where the order contains a direction under section 201 (provisional tree preservation orders), a statement of the effect of that direction.

(3) Subject to regulations 6(c), 7(c) and 9(1)(c), a copy of the order shall be made available for inspection, free of charge, at all reasonable hours, at the offices of the authority by whom the order was made; and where an order is made on behalf of an authority, it shall be made available for inspection also at the offices of the authority on whose behalf it was made.

## **Objections and representations**

**4.—**(1) Subject to paragraph (2), objections and representations—

(a) shall be made in writing and—

(i) delivered to the authority not later than the date specified by them under regulation 3(2)(c); or

(ii) sent to the authority in a properly addressed and pre-paid letter posted at such time that, in the ordinary course of post, it would be delivered to them not later than that date;

(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.

(2) The authority may treat as duly made objections and representations which do not comply with the requirements of paragraph (1) if, in the particular case, they are satisfied that compliance with those requirements could not reasonably have been expected.

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

**5.—**(1) The authority shall not confirm an order which they have made unless they have first considered any objections and representations duly made in respect of it and not withdrawn.

(2) An authority may confirm an order with or without modification.

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

(a) that the order was confirmed with modifications or without modification, as the case may be; and

(b) the date on which it was confirmed.

(4) Where an order is confirmed with modifications, the modifications shall be indicated in the order by distinctive type or other means.

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

**6.** As soon as practicable after confirming an order, the authority which confirmed it shall—

(a) notify the persons interested in the land affected by the order—

(i) of the confirmation of the order;

(ii) of the date on which the order was confirmed; and

(iii) of the time within which an application may be made to the High Court under section 284 (validity of development plans and certain orders, decisions and directions), and of the grounds on which such an application may be made;

(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, but otherwise in accordance with paragraph (3) of that regulation.

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

**7.** Where an authority decide not to confirm an order they shall as soon as practicable—

(a) endorse the order with a statement to that effect and with the date of their decision;

- (b) notify the persons interested in the land affected by the order of their decision; and
- (c) withdraw from public inspection the copy of the order made available in accordance with regulation 3.

#### **Variation of tree preservation orders**

**8.—**(1) Where an authority vary an order<sup>(3)</sup> they shall—

- (a) endorse the original order with a statement to the effect that the order has been varied, specifying the date of the variation order;
- (b) serve on the persons interested in the land affected by the variation order—
  - (i) a copy of the variation order; and
  - (ii) a statement explaining the effect of the variation order; and
- (c) make a copy of the variation order available for public inspection, in accordance with paragraph (3) of regulation 3.

(2) Where an authority vary an order so as to add to Schedule 1 (and the map) references to trees, groups of trees or woodlands to which the order did not previously apply, regulations 3(1)(a)(ii) and (2) and 4 to 7 shall apply to the variation order as they applied to the order, subject to the substitution, for references to persons interested, of references to persons who are the owners and occupiers of the land affected by the variation order and every other person whom the authority know to be entitled to fell any of the trees to which the variation order relates, or to work by surface working any minerals in, on or under that land.

(3) For the purpose of this regulation, “land affected by the variation order” includes any land adjoining the land on which the trees, groups of trees or woodlands to which the variation order relates are situated.

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

**9.—**(1) Where an authority revoke an order<sup>(4)</sup> they 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.

(2) A revocation order shall contain a statement of the date on which it was made.

## **PART III**

### **TREES IN CONSERVATION AREAS**

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

**10.—**(1) Section 211 (preservation of trees in conservation areas) shall not apply to—

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<sup>(3)</sup> See section 333(7) of the Town and Country Planning Act 1990.

<sup>(4)</sup> See section 333(7) of the Town and Country Planning Act 1990.

- (a) the cutting down, uprooting, topping or lopping of a tree in the circumstances mentioned in section 198(6) or in article 5 of the prescribed form of tree preservation order set out in the Schedule to these Regulations;
  - (b) the cutting down of a tree in accordance with a felling licence granted by the Forestry Commissioners under Part II (Commissioners' power to control felling of trees) of the Forestry Act 1967<sup>(5)</sup>;
  - (c) the cutting down of a tree in accordance with a plan of operations or other working plan approved by the Forestry Commissioners, and for the time being in force, under a forestry dedication covenant entered into under section 5 (forestry dedication covenants and agreements) of the Forestry Act 1967 or under the conditions of a grant or loan made under section 1 (finance for forestry) of the Forestry Act 1979<sup>(6)</sup>;
  - (d) the cutting down, uprooting, topping or lopping of a tree by, or on behalf of, a local planning authority;
  - (e) 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
  - (f) 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 (1)(e)(i) and (f) or paragraph (1)(e)(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;
  - (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.

## PART IV

### APPEALS TO BE DISPOSED OF ON THE BASIS OF WRITTEN REPRESENTATIONS AND OTHER DOCUMENTS

#### Application of Part IV and interpretation

- 11.—(1) This Part applies in relation to every appeal—
- (a) made on or after the date on which these Regulations come into force, under section 78 as applied to applications under orders; and
  - (b) which is to be disposed of without a hearing or an inquiry to which rules under section 9 (procedure in connection with statutory inquiries) of the Tribunals and Inquiries Act 1992<sup>(7)</sup> apply.
- (2) In this Part—
- “appeals questionnaire” means a document in the form supplied by the Secretary of State for the purposes of this Part;

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<sup>(5)</sup> 1967 c. 10.

<sup>(6)</sup> 1979 c. 21.

<sup>(7)</sup> 1992 c. 53.

“relevant time limit” means the time limit specified in regulation 13 or in any paragraph of regulation 14, or any such time limit as varied under regulation 15; and

“starting date”, in relation to an appeal, means the date notified by the Secretary of State under regulation 12 as applicable to procedures under this Part as regards that appeal.

#### **Notification of starting date**

**12.** The Secretary of State shall, on receipt of an appeal to which this Part applies, inform the appellant and the authority, by notice in writing, of the starting date.

#### **Authority’s response to appeal**

**13.** The authority shall, not later than two weeks after the starting date, submit to the Secretary of State an appropriately completed appeals questionnaire and a copy of the documents referred to in that questionnaire.

#### **Additional and further representations**

**14.—(1)** The appellant and the authority may make additional representations, and any such representations shall be submitted to the Secretary of State not later than six weeks after the starting date.

(2) The Secretary of State shall, by notice in writing, invite the appellant to make further representations in response to—

- (a) the documents submitted in accordance with regulation 13; and
- (b) the authority’s additional representations (if any) submitted in accordance with paragraph (1),

and the appellant’s further representations (if any) shall be submitted to the Secretary of State not later than two weeks after the date of service of that notice.

(3) Where the appellant has submitted additional representations in accordance with paragraph (1), the Secretary of State shall, by notice in writing, invite the authority to make further representations in response to the appellant’s additional representations, and such further representations (if any) shall be submitted to the Secretary of State not later than two weeks after the date of service of that notice.

#### **Power to vary relevant time limits**

**15.** The Secretary of State may, by giving a direction by notice in writing to the appellant and the authority, vary any relevant time limit in a particular case.

#### **Decision on basis of material submitted within relevant time limits**

**16.—(1)** The Secretary of State may proceed to a decision taking into account only such representations and supporting documents as have been submitted within the relevant time limits.

(2) The Secretary of State may, after giving the appellant and the authority notice in writing of his intention to do so, proceed to a decision notwithstanding that no representations have been made within the relevant time limits, if it appears to him that he has sufficient material before him to enable him to reach a decision on the merits of the case.

## PART V

### AMENDMENT OF REGULATIONS, REVOCATIONS AND SAVINGS

#### Amendment of the Town and Country Planning General Regulations 1992

- 17.** The Town and Country Planning General Regulations 1992<sup>(8)</sup> are amended—
- (a) in regulation 2 (application of provisions of the 1990 Act)—
    - (i) in paragraph (1), by the substitution for “11 below” of “11A below”; and
    - (ii) in paragraph (2), by the substitution for “regulation 11” of “regulations 11 and 11A”;
  - (b) in regulation 11 (other consents)—
    - (i) by the insertion after “they shall” of “, subject to paragraph (2) and regulation 11A,”;
    - (ii) at the end, by the addition of the following—
      - “(2) Where the consent sought under Part VIII is under a tree preservation order, the application shall be determined by the interested planning authority.
      - (3) Notwithstanding anything in section 101 (arrangements for the discharge of functions by local authorities) of the Local Government Act 1972<sup>(9)</sup>, no application may be determined under paragraph (2)—
  - (c) after regulation 11, by the insertion of the following—

#### **“Applications by interested planning authorities under tree preservation orders**

**11A.**—(1) Before determining an application under regulation 11(2) the interested planning authority shall publicise it by posting a notice in at least one place on or near the land to which the application relates for not less than 21 days.

- (2) A notice under paragraph (1) shall—
  - (a) identify the tree or trees to which the application relates (if necessary by reference to a plan);
  - (b) specify the work for which consent is sought;
  - (c) state the interested planning authority’s reasons for making the application;
  - (d) state the place at which a copy of the application may be inspected;
  - (e) state the address to which representations may be sent; and
  - (f) state the date (being not less than 21 days from the date on which the notice is first displayed) by which representations shall be made,

and shall be sited and displayed in such a way as to be easily visible and legible by members of the public.

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<sup>(8)</sup> S.I. 1992/1492.

<sup>(9)</sup> 1972 c. 70.

(3) Where a notice under paragraph (1) is, without any fault or intention of the interested planning authority, removed, obscured or defaced before the date referred to in paragraph (2)(f), the authority shall be treated as having complied with the requirements of paragraph (1) if they have taken reasonable steps to preserve the notice and, if necessary, replace it.

(4) In determining an application under regulation 11(2), the interested planning authority shall take into account any representations made by the date specified in the notice under paragraph (1) of this regulation.

(5) The interested planning authority shall give notice of their decision to every person who made representations which the authority were required to take into account.”

### **Revocation and savings**

**18.**—(1) Subject to paragraph (2), the Town and Country Planning (Tree Preservation Order) Regulations 1969<sup>(10)</sup>, the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975<sup>(11)</sup>, the Town and Country Planning (Tree Preservation Order) (Amendment) Regulations 1981<sup>(12)</sup>, the Town and Country Planning (Tree Preservation Order) (Amendment) Regulations 1988<sup>(13)</sup>, and so much of article 2 of, and the Schedule to, the Electricity Act 1989 (Consequential Modifications of Subordinate Legislation) Order 1990<sup>(14)</sup> as relates to the Town and Country Planning (Tree Preservation Order) Regulations 1969, are hereby revoked.

(2) Nothing in paragraph (1) shall affect any order made before the date on which these Regulations come into force (whether the order is confirmed before that date or not).

Signed by authority of the Secretary of State for the Environment, Transport and the Regions

*Michael Meacher*  
Minister of State,

Department of the Environment, Transport and  
the Regions

30th June 1999

Signed by authority of the Secretary of State for Wales

*Jon Owen Jones*  
Parliamentary Under-Secretary of State, Welsh  
Office

25th June 1999

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<sup>(10)</sup> S.I. 1969/17.  
<sup>(11)</sup> S.I. 1975/148.  
<sup>(12)</sup> S.I. 1981/14.  
<sup>(13)</sup> S.I. 1988/963.  
<sup>(14)</sup> S.I. 1990/526.



## SCHEDULE

Regulation 2(1)

### FORM OF TREE PRESERVATION ORDER

Town and Country Planning Act 1990

The [*title of Order (including year)*]

The [*name of Council*], in exercise of the powers conferred on them by sections 198 [,201(15)] and 203 of the Town and Country Planning Act 1990(16) hereby make the following Order—

#### Citation

1. This Order may be cited as [*title of Order (including year)*].

#### Interpretation

2. In this Order “the authority” means the [*name of Council making the Order*] and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990.

#### [Application of section 201

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on [*insert date*].]

#### Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders)(17) [or subsection (3) of section 200 (orders affecting land where Forestry Commissioners interested)], and subject to article 5, no person shall—

- (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

#### Exemptions

- 5.—(1) Nothing in article 4 shall prevent—

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- (15) Under section 199(1), tree preservation orders generally do not take effect until confirmed, but a direction may be given under section 201 for an order to take provisional effect immediately.
- (16) Where the Order is to be made under the sections cited *and* section 300 of the Town and Country Planning Act 1990, all those provisions should be cited, as should the fact of the consent of the appropriate authority. As to the circumstances in which the consent of the Forestry Commission is required (and should be cited) *see* section 200(1) of that Act.
- (17) Subsection (6) of section 198 exempts from the application of tree preservation orders the cutting down, uprooting, topping or lopping of trees which are dying, dead or have become dangerous, or the undertaking of those acts in compliance with obligations imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance. Subsection (7) of that section makes section 198 subject to section 39(2) of the Housing and Planning Act 1986 (c. 63) (saving for effect of section 2(4) of the Opencast Coal Act 1958 on land affected by a tree preservation order despite its repeal) and section 15 of the Forestry Act 1967 (c. 10) (licences under that Act to fell trees comprised in a tree preservation order).

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- (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land<sup>(18)</sup> 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 Town and Country Planning (General Permitted Development) Order 1995<sup>(19)</sup>;
  - (b) the cutting down, topping, lopping or uprooting of a 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;
  - (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
  - (d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a)(iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);
  - (e) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
  - (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose “drainage body” and “drainage” have the same meanings as in the Land Drainage Act 1991<sup>(20)</sup>; or
  - (g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989<sup>(21)</sup>.
- (2) In paragraph (1), “statutory undertaker” means any of the following—
- a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,
  - a relevant airport operator (within the meaning of Part V of the Airports Act 1986)<sup>(22)</sup>,
  - the holder of a licence under section 6 of the Electricity Act 1989,
  - a public gas transporter,
  - the holder of a licence under section 7 of the Telecommunications Act 1984<sup>(23)</sup> to whom the telecommunications code (within the meaning of that Act) is applied,
  - a water or sewerage undertaker,
  - the Civil Aviation Authority or a body acting on behalf of that Authority,

<sup>(18)</sup> See section 263 of the Town and Country Planning Act 1990.

<sup>(19)</sup> S.I. 1995/418.

<sup>(20)</sup> 1991 c. 59, see section 72.

<sup>(21)</sup> 1989 c. 29.

<sup>(22)</sup> 1986 c. 31.

<sup>(23)</sup> 1984 c. 12.

the Post Office.

### **Applications for consent under the Order**

6. An application for consent to the cutting down, topping, lopping or uprooting of any tree in respect of which this Order is for the time being in force shall be made in writing to the authority and shall—

- (a) identify the tree or trees to which it relates (if necessary, by reference to a plan);
- (b) specify the work for which consent is sought; and
- (c) contain a statement of the applicant's reasons for making the application.

### **Application of provisions of the Town and Country Planning Act 1990**

7.—(1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part I of Schedule 2 to 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 II of that Schedule.

### **Directions as to replanting**

8.—(1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give to the owner of the land on which that part is situated ("the relevant land") a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.

(2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.

(3) A direction under paragraph (1) may include requirements as to—

- (a) species;
- (b) number of trees per hectare;
- (c) the preparation of the relevant land prior to the replanting; and
- (d) the erection of fencing necessary for the protection of the newly planted trees.

### **Compensation**

9.—(1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of—

- (a) the refusal of any consent required under this Order; or
- (b) the grant of any such consent subject to conditions,

he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

(2) No claim, other than a claim made under paragraph (3), may be made under this article—

- (a) if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
- (b) if the amount in respect of which the claim would otherwise have been made is less than £500.

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(3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

(4) In any other case, 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 submitted in accordance with article 6(c) and any documents or other evidence submitted in support of any such statement, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- (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; or
- (d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

(6) In this article—

“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; and

“owner” has the meaning given to it by section 34 of the Forestry Act 1967.

#### **[Application to trees to be planted pursuant to a condition]**

**10.]** In relation to the tree[s] identified in the first column of Schedule 1 by the letter “C”, being [a tree] [trees] to be planted pursuant to a condition (being a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees)), this Order takes effect as from the time when [that tree is planted] [those trees are planted].]

#### **[Orders made by virtue of section 300]**

**11.]** This Order takes effect in accordance with subsection (3) of section 300 (tree preservation orders in anticipation of disposal of Crown land).]

Dated this [ ] day of [insert month and year]

[if the Council's Standing Orders require the sealing of such documents:]

[The Common Seal of the [insert name of Council]

was hereunto affixed in the presence of—

... ..]

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[if the Council's Standing Orders do not require the sealing of such documents:]

[Signed on behalf of the [insert name of Council]]

... ..  
Authorised by the Council to sign in that behalf]

**[CONFIRMATION OF ORDER]**

[This Order was confirmed by the [insert name of Council] without modification on the [ ] day of [insert month and year]

OR

[This Order was confirmed by the [insert name of Council], subject to the modifications indicated by [state how indicated], on the [ ] day of [insert month and year]

... ..  
Authorised by the Council to sign in that behalf]

**[DECISION NOT TO CONFIRM ORDER]**

[A decision not to confirm this Order was taken by [insert name of Council] on the [ ] day of [insert month and year]

... ..  
Authorised by the Council to sign in that behalf]

**[VARIATION OF ORDER]**

[This Order was varied by the [insert name of Council] on the [ ] day of [insert month and year] under the reference number [insert reference number of the variation order]

... ..  
Authorised by the Council to sign in that behalf]

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## REVOCATION OF ORDER

[This Order was revoked by the *[insert name of Council]* on the [ ] day of *[insert month and year]* under the reference number *[insert reference number of the revocation order]*

... ..  
Authorised by the Council to sign in that behalf]

## SCHEDULE 1

Article 4

### SPECIFICATION OF TREES

#### Trees specified individually

(encircled in black on the map)

Reference on map	Description	Situation
[T1]	[ash]	<i>[complete if necessary to specify more precisely the position of the trees]</i>

#### Trees specified by reference to an area

(within a dotted black line on the map)

Reference on map	Description	Situation
[A1]	[trees (of whatever species) within the area marked A1 on the map]	<i>[complete if necessary to specify more precisely the position of the trees]</i>
[A2]	[the ash, beech, larch and oak trees within the area marked A2 on the map]	<i>[complete if necessary to specify more precisely the position of the trees]</i>

#### Groups of trees

(within a broken line on the map)

Reference on map	Description (including number of trees in the group)	Situation
[G1]	[2 ash trees, 3 elm trees and 3 oak trees]	<i>[complete if necessary to specify more precisely the position of the trees]</i>

#### Woodlands

(within a continuous black line on the map)

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Reference on map	Description	Situation
[W1]	[mixed hardwoods (mainly )]	[ <i>complete if necessary to specify more precisely the position of the trees</i> ]
[W2]	[mixed conifers and deciduous trees (mainly )]	

## SCHEDULE 2

Article 7

## PART I

Provisions of the Town and Country Planning Act  
1990 applied with adaptations or modifications

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	<p>(a) (a) In subsection (1)—</p> <p>(i) omit—  “ , in such manner as may be prescribed by a development order,”  “such” in the second place where it appears, and  “as may be so prescribed”; and</p> <p>(ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”.</p> <p>(b) In subsection (2)—</p> <p>(i) after “contain” insert “ , as regards each such order”; and</p> <p>(ii) for paragraphs (a) and (b) substitute—  “(a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and  (b) a statement as to the subject-matter of every appeal under the order</p>

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Provision of the Town and Country Planning Act 1990	Adaptation or Modification
Section 70 (determination of applications: general considerations)	<p>and of the date and nature of the Secretary of State's determination of it.”.</p> <p>(c) Omit subsections (3) and (4) (as required by section 198(4)).</p> <p>(a) (a) In subsection (1)—</p> <p>(i) substitute—</p> <p>“Subject to subsections (1A) and (1B), where” for “Where”;</p> <p>“the authority” for “a local planning authority”;</p> <p>“consent under a tree preservation order” for “planning permission” where those words first appear; and</p> <p>“consent under the order” for “planning permission” in both of the other places where those words appear;</p> <p>(ii) after “think fit”, insert—</p> <p>“(including conditions limiting the duration of the consent or requiring the replacement of trees)”;</p> <p>and</p> <p>(iii) omit “subject to sections 91 and 92.”.</p> <p>(b) After subsection (1) insert—</p> <p>“(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.</p> <p>(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry</p>



Provision of the Town and Country Planning Act 1990	Adaptation or Modification
	operations (but may give directions for securing replanting).”.
	(c) Omit subsections (2) and (3).
Section 75 (effect of planning permission)	<p>(a) (a) In subsection (1) substitute—</p> <p>(i) “Any” for the words from “Without” to “any”;</p> <p>(ii) “consent under a tree preservation order” for “planning permission to develop land”;</p> <p>(iii) “the consent” for “the permission”; and</p> <p>(iv) “the land to which the order relates” for “the land”.</p> <p>(b) Omit subsections (2) and (3).</p>
Section 78 (right to appeal against planning decisions and failure to take such decisions)	<p>(a) (a) In subsection (1) substitute—</p> <p>(i) “the authority” for “a local planning authority”;</p> <p>(ii) “consent under a tree preservation order” for “planning permission” in the first place where those words appear;</p> <p>(iii) “consent under such an order” for “planning permission” in the second place where those words appear;</p> <p>(iv) for paragraph (c) substitute—</p> <p>“(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or</p> <p>(d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was</p>

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Provision of the Town and Country Planning Act 1990	Adaptation or Modification
	received by the authority,”.
	(b) Omit subsection (2).
	(c) In subsection (3) for “served within such time and in such manner as may be prescribed by a development order.” substitute— “in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served— (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority’s decision or direction or within such longer period as the Secretary of State may allow; (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.”.
	(d) For subsection (4), substitute— “(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).”.
	(e) For subsection (5), substitute— “(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
	that the authority decided to refuse the application in question.”.
Section 79 (determination of appeals)(24)	<p>(a) (a) In subsections (1) and (2), substitute “the authority” for “the local planning authority”.</p> <p>(b) Omit subsection (3).</p> <p>(c) In subsection (4), substitute—</p> <p>(i) “section 70(1), (1A) and (1B)” for “sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5”;</p> <p>(ii) “consent under a tree preservation order” for “planning permission”; and</p> <p>(iii) “the authority.” for “the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of section 65 or 71.”.</p> <p>(d) Omit subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after “section 78”.</p>

## PART II

### PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990, AS ADAPTED AND MODIFIED BY PART I

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

#### Section 69

(1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority.

(2) The register shall contain, as regards each such order—

- (a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and
- (b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State’s determination of it.

... ..

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(24) Section 79 was amended by the Planning and Compensation Act 1991 (c. 34), section 18 and Schedule 7, paragraph 19.

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(5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

#### Section 70

(1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order—

- (a) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
- (b) they may refuse consent under the order.

(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

... ..

#### Section 75

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) enure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

... ..

#### Section 78

(1) Where the authority—

- (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;
- (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant it subject to conditions;
- (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
- (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,

the applicant may by notice appeal to the Secretary of State.

... ..

(3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served—

- (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;
- (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to

conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.

(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).

(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

#### Section 79

(1) On an appeal under section 78 the Secretary of State may—

(a) allow or dismiss the appeal, or

(b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(2) Before determining an appeal under section 78 the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

... ..

(4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(5) The decision of the Secretary of State on such an appeal shall be final.

... ..

(7) Schedule 6 applies to appeals under section 78.

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### EXPLANATORY NOTE

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

These Regulations replace the Town and Country Planning (Tree Preservation Order) Regulations 1969 and the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975. They also amend the Town and Country Planning General Regulations 1992.

Part I of the Regulations defines terms used in the Regulations.

Part II prescribes the form of tree preservation orders and the procedure for their making, confirmation, variation and revocation. The prescribed form is set out in the Schedule to the Regulations.

Unless the works proposed are exempted by virtue of section 198(6) or (7) or section 200(3) of the Town and Country Planning Act 1990 or article 5 of the Order, the consent of the local planning authority is required before any tree protected by the Order may be cut down, topped, lopped, uprooted, damaged or destroyed.

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The exemptions for which section 198(6) provides relate to the cutting down, uprooting, topping or lopping of trees which are dying, dead or have become dangerous, or the undertaking of those acts in compliance with obligations imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance.

Section 198(7) provides exemptions relevant to section 39(2) of the Housing and Planning Act 1986 (c. 63) (saving for effect of section 2(4) of the Opencast Coal Act 1958 on land affected by a tree preservation order despite its repeal) and section 15 of the Forestry Act 1967 (c. 10) (licences under that Act to fell trees comprised in a tree preservation order).

Section 200(3) provides exemptions for the cutting down of a tree in relation to land where a plan of operations, or other working plan, has been approved by the Forestry Commissioners under a forestry dedication covenant, or under the conditions of a grant or loan made under section 1 of the Forestry Act 1979 (c. 21).

Article 9 of the prescribed form provides for compensation in respect of the refusal of consents or the grant of consents subject to conditions. (Compensation arising from replanting directions is provided for by section 204 of The Town and Country Planning Act 1990.)

Part I of Schedule 2 to the prescribed form sets out adaptations and modifications to provisions of the Town and Country Planning Act 1990 which are applied by article 7 of the Order, and Part II of that Schedule sets out the provisions as they appear in consequence of those adaptations and modifications.

Part III of the Regulations makes special provision in relation to trees in conservation areas.

Part IV of the Regulations prescribes the procedure to be followed if an appeal in respect of an application made under a tree preservation order is to be disposed of without an inquiry or hearing. It provides for the submission of, and the opportunity to comment on, written representations by the appellant and the authority within prescribed time limits, and for the determination of appeals on the basis of the representations submitted within the prescribed time limits.

Regulation 17 in Part V amends the Town and Country Planning General Regulations 1992. The effect of the new provisions is that a local planning authority no longer has to apply to the Secretary of State for consent for the carrying out of certain works in relation to trees protected by a tree preservation order on land which it owns. The authority may authorise the carrying out of the works provided that the decision is taken by members or officers who are not directly involved with the management of the land to which the application for consent relates. New regulation 11A provides for publicity for applications, for the consideration of representations before a decision is made and for informing those who made representations of the authority's decision.

Regulation 18 revokes, with savings, the Town and Country Planning (Tree Preservation Order) Regulations 1969, the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975, the Town and Country Planning (Tree Preservation Order) (Amendment) Regulations 1981, the Town and Country Planning (Tree Preservation Order) (Amendment) Regulations 1988 and so much of the Electricity Act 1989 (Consequential Modifications of Subordinate Legislation) Order 1990 as relates to the Town and Country Planning (Tree Preservation Order) Regulations 1969.