
STATUTORY INSTRUMENTS

2012 No. 605

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (Tree Preservation)(England) Regulations 2012

<i>Made</i>	- - - -	<i>28th February 2012</i>
<i>Laid before Parliament</i>		<i>5th March 2012</i>
<i>Coming into force</i>	- -	<i>6th April 2012</i>

The Secretary of State for Communities and Local Government, in exercise of the powers conferred by sections 202A to 202G, 206(1)(b), 212, 213(1)(b), 316(1), 323 and 333(1) of the Town and Country Planning Act 1990(1), makes the following Regulations:

PART 1

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Town and Country Planning (Tree Preservation) (England) Regulations 2012 and shall come into force on 6th April 2012.

(2) These Regulations apply in relation to England only.

(1) 1990 c. 8. Sections 202A-202G were inserted by section 192 of the Planning Act 2008 (c. 29). Section 202E was amended by S.I. 2009/1307. Sections 206, 212 and 213(1)(b) were amended by section 192(8) of, and paragraphs 7, 11, 15 and 16 of Schedule 8 to, the Planning Act 2008. Section 212 was also amended by Schedule 13 to the Planning Act 2008. Section 316 was substituted by section 20 of the Planning and Compensation Act 1991 (c. 34). Section 323 was amended by section 18(1) of, and paragraph 26 of Schedule 3 to, the Tribunals and Inquiries Act 1992 (c. 53) and paragraphs 1 and 12 of Schedule 10 to the Planning Act 2008. Section 333(1) was amended by section 78 of, and paragraph 32(12) of Schedule 10 to the Environment Act 1995 (c. 25). See section 336(1) of the Town and Country Planning Act 1990 for the definition of “prescribed”. The functions of the Secretary of State under sections 206, 212, 213(1)(b), 316(1), 323 and 333(1) are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales. They were previously transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); see the entry in Schedule 1 for the Town and Country Planning Act 1990, as substituted by article 4 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253). By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), the functions were transferred to the Welsh Ministers. As to section 202A see section 202A(5).

Interpretation

2.—(1) In these Regulations—

“authority” means a local planning authority making, or having functions under, an order;

“commencement” means the date on which these Regulations come into force;

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

“order” means a tree preservation order; and

“person interested” in relation to an order means every owner and occupier of the land affected by the order and every other person whom the authority knows to be entitled—

(a) to cut down, lop or top any of the trees to which the order relates; or

(b) to work by surface working any minerals in, on or under the land affected by the order.

(2) 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 2

TREE PRESERVATION ORDERS

Form of tree preservation order

3.—(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 of each species in the group;

(c) shall indicate the position of the trees, groups of trees or woodlands, as the case may be, by reference to a map; and

(d) shall include information as to—

(i) whether or not the order was confirmed;

(ii) any variation of the order; and

(iii) any revocation of the order.

(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.

(4) In the case of any discrepancy between the map contained in, or annexed to, an order and the specification contained in the Schedule to that order, the map shall prevail.

Provisional effect of order

4.—(1) An order shall not take effect (other than provisionally in accordance with paragraph (2)) unless and until confirmed by the authority, and must be confirmed no later than the expiration of the period of six months beginning with the date on which it was made.

(2) Until confirmation an order shall take effect provisionally on the date on which it is made until—

- (a) the expiration of a period of six months beginning with the date on which the order was made;
 - (b) the date on which the order is confirmed; or
 - (c) the date on which the authority decide not to confirm the order,
- whichever first occurs.

Procedure after making an order

5.—(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 specified in paragraph (2);
 - (b) make a copy of the order available for public inspection, in accordance with paragraph (3); and
 - (c) in the case of an order made following service of a notice under section 211(3) (preservation of trees in conservation areas), serve on the person who served that notice the information specified in sub-paragraph (a).
- (2) The particulars mentioned in paragraph (1)(a)(ii) 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 6;
 - (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; and
 - (d) a copy of regulation 6.

(3) 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

6.—(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 5(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 such objections and 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

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

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

(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 modifications, 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.

(5) A modification under paragraph (2) may not add to the Schedule to the order (and the map) references to a tree to which the order did not previously apply.

Action after confirmation of tree preservation order

8. 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(2) (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 5, 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.

Action where tree preservation order not confirmed

9. 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 5.

Variation of tree preservation orders

10.—(1) Where an authority vary an order they shall—

(a) endorse the original order with a statement to the effect that the order has been varied, specifying the date on which the variation order takes effect;

(b) serve on the persons interested in the land affected by the variation order—

(2) There are amendments to section 284 but none is relevant to this regulation.

- (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 regulation 5.
- (2) Where an authority vary an order so as to add to the Schedule to the order (and the map) references to a tree to which the order did not previously apply, regulations 5(1)(a)(ii) and (2) and 6 to 9 shall apply to the variation order as they applied to the order, subject to the substitution, for references to persons interested, of references to—
- (a) persons who are the owners and occupiers of the land affected by the variation order; and
 - (b) every other person whom the authority know to be entitled to cut down, lop or top 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 paragraph (1)(a) the date on which the variation order takes effect shall be the date on which the variation order is made, except that, where paragraph (2) applies, the date on which the variation order takes effect shall be the date on which the variation order is confirmed under regulation 7(2).
- (4) For the purpose of this regulation, “land affected by the variation order” means the land on which the trees, groups of trees or woodlands to which the variation order relates are situated.

Revocation of tree preservation orders

11. Where an authority revoke an order 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;
 - (b) notify the persons interested in the land affected by the order that the order has been revoked; and
 - (c) withdraw from public inspection the copy of the original order made available in accordance with regulation 5.

Register

- 12.—(1) Every authority shall keep a register containing the following information with respect to orders made by that authority—
- (a) details of every application under an order and of the authority’s decision (if any) in relation to each such application;
 - (b) a statement of the subject-matter of every appeal under an order and of the date and nature of the Secretary of State’s determination of it; and
 - (c) details of any conditions with respect to replanting attaching to any consent granted under regulation 17(1).
- (2) Every register kept under this regulation shall be available for inspection by the public at all reasonable hours.

PART 3

PROHIBITED ACTIVITIES AND EXCEPTIONS

Prohibited activities

13. Without prejudice to subsection (7) of section 198(3) (power to make tree preservation orders) or subsection (1) of section 200(4) (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

- (a) cut down;
- (b) top;
- (c) lop;
- (d) uproot;
- (e) wilfully damage; or
- (f) wilfully destroy,

any tree to which an order relates, or shall cause or permit the carrying out of any of the activities in sub-paragraphs (a) to (f) to such a tree, except with the written consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

Exceptions

14.—(1) Nothing in regulation 13 shall prevent—

- (a) the cutting down, topping, lopping or uprooting of a tree—
 - (i) which is dead;
 - (ii) in compliance with any obligation imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance;
 - (iii) by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary—
 - (aa) in the interests of the safe operation of the undertaking;
 - (bb) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker;
 - (cc) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995(5);
 - (iv) where that work is required to enable the implementation of an order made or confirmed under paragraph 8(1) or paragraph 15(1) of Schedule 1 to the Highways Act 1980(6) (procedures for making or confirming certain orders or schemes);
 - (v) where that work is urgently necessary for national security purposes;
 - (vi) where that tree is cultivated for the production of fruit in the course of a business or trade and such work is in the interests of that business or trade;

(3) Section 198(7) was amended by section 192(8) of, and paragraphs 7 and 8 of Schedule 8 to, the Planning Act 2008 (c. 29).
 (4) Section 200 was substituted by section 85 of the Planning and Compulsory Purchase Act 2004 (c. 5) and subsection (1) was amended by section 192(8) of, and paragraphs 7 and 9 of Schedule 8 to, the Planning Act 2008.
 (5) S.I. 1995/418; amended by the Utilities Act 2000 (c. 27), section 76(7). Relevant amending instruments are S.I. 1996/528, 2001/1149, 2003/2155 and 2011/2085.
 (6) 1980 c. 66.

- (vii) so far as such work is necessary to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (iii)(cc), 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 Town and Country Planning Act 1990 (control over development), or deemed to have been granted (whether for the purposes of that Part or otherwise);
 - (viii) 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; or
 - (ix) 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” shall have the same meanings as in section 72(1) of the Land Drainage Act 1991(7) (interpretation);
- (b) the removal of dead branches from a living tree;
 - (c) the cutting down, uprooting, topping or lopping of a tree, to the extent that such works are urgently necessary to remove an immediate risk of serious harm, or to such other extent as agreed in writing by the authority prior to the works being undertaken;
 - (d) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit; or
 - (e) without prejudice to sub-paragraph (a)(ii), 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(8) (other powers etc of licence holders - felling and lopping of trees etc).
- (2) Where paragraphs (1)(a)(i) or (1)(c) apply, notice in writing of the proposed activities shall be given to the authority—
- (a) in the case of works urgently necessary to remove an immediate risk of serious harm, as soon as practicable after the works become necessary; and
 - (b) in any other case at least five working days prior to the date on which the works are to be commenced.
- (3) In paragraph (1), “statutory undertaker” means any of the following—
- (a) 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;
 - (b) a relevant airport operator (within the meaning of Part V of the Airports Act 1986(9) (status of certain airport operators as statutory undertakers, etc));
 - (c) the holder of a licence under section 6 of the Electricity Act 1989(10) (licences authorising supply, etc);
 - (d) a gas transporter;

(7) 1991 c. 59; these definitions were amended by the Environment Act 1995 (c. 25), sections 100(2) and 120, and Schedule 22, paragraphs 191 and 194.

(8) 1989 c. 29.

(9) 1986 c. 31; amended by SI 2011/2491, by the Local Transport Act 2008 (c. 26) sections 77 and paragraph 54 of Part 4 to Schedule 4 and by the Statute Repeals Act 2004 (c. 14).

(10) Section 6 was amended by the Utilities Act 2000, section 30, by the Energy Act 2004 (c. 20) sections 89, 136, 145 and 197(9), Schedule 19, paragraphs 3 and 5, and Schedule 23, Part 1, and by the Climate Change Act 2008 (c. 27), section 79 and Schedule 8, paragraph 2. There are other amendments not relevant to these Regulations.

- (e) an operator to whom the telecommunications code (set out in Schedule 2 to the Telecommunications Act 1984⁽¹¹⁾) applies;
- (f) a water or sewerage undertaker;
- (g) the Civil Aviation Authority, a body acting on behalf of that authority or a person who holds a licence under Chapter I of Part I of the Transport Act 2000⁽¹²⁾ (air traffic services);
- (h) a universal postal service provider in connection with the provision of a universal postal service.

Trees in conservation areas – exceptions

15.—(1) Section 211⁽¹³⁾ (preservation of trees in conservation areas) shall not apply to—

- (a) the cutting down, topping, lopping or uprooting of a tree—
 - (i) in the circumstances mentioned in regulation 14;
 - (ii) by, or on behalf of, the Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967⁽¹⁴⁾ or otherwise under their management or supervision; or
 - (iii) by, or on behalf of, a local planning authority;
- (b) the cutting down of a tree in accordance with a felling licence granted by the Forestry Commissioners under Part II of the Forestry Act 1967 (Commissioners’ power to control felling of trees);
- (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 of the Forestry Act 1967⁽¹⁵⁾ (forestry dedication covenants and agreements) or under the conditions of a grant or loan made under section 1 of the Forestry Act 1979⁽¹⁶⁾ (finance for forestry);
- (d) 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
- (e) 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)(d)(i) and (e) or paragraph (1)(d)(ii) as exceeding 75 millimetres or 100 millimetres respectively, if any stem when measured over its bark at that point exceeds 75 millimetres or 100 millimetres respectively; and
- (b) in any other case, the diameter of a tree shall be ascertained by measurement, over the bark of the tree, at a point 1.5 metres above the natural ground level.

⁽¹¹⁾ 1984 c. 12; see section 106 of the Communications Act 2003 (c. 21) (in force in part (see S.I. 2003/1900 and 2003/3142) and otherwise coming into force on a date to be appointed).

⁽¹²⁾ 2000 c. 38.

⁽¹³⁾ Section 211 was amended by section 86 of the Planning and Compulsory Purchase Act 2004 (c. 5) and by sections 36 and 192(8) of, and paragraphs 34 and 36 of Schedule 2 and paragraphs 7 and 14 of Schedule 8 to, the Planning Act 2008 (c. 29).

⁽¹⁴⁾ 1967 c. 10.

⁽¹⁵⁾ Section 5 was amended by S.I. 1999/1747 and S.I. 2009/1307; there are other amendments not relevant to these Regulations.

⁽¹⁶⁾ 1979 c. 21; section 1 was amended by S.I. 2000/746; there are other amendments not relevant to these Regulations.

PART 4

APPLICATIONS FOR CONSENT UNDER TREE PRESERVATION ORDERS

Applications for consent under tree preservation order

16.—(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—

- (a) be made in writing to the authority on a form published by the Secretary of State for the purpose of proceedings under these Regulations;
- (b) include the particulars specified in the form; and
- (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 that application;
- (b) that the address for these purposes is the address incorporated into, or otherwise logically associated with, that application; and
- (c) that deemed agreement under this paragraph shall subsist until the applicant gives notice in writing—
 - (i) withdrawing any address notified to the authority for that purpose; or
 - (ii) revoking the 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.

Determination of applications for consent and conditions

17.—(1) Where an application is made to the authority for consent under an order in accordance with regulation 16 the authority may—

- (a) grant consent under the order, either unconditionally or subject to any such condition as is specified in paragraph (2); or
- (b) refuse consent under the order.

(2) The conditions referred to in paragraph (1) are—

- (a) conditions within subsection (4) of section 202D(17) (tree preservation regulations: consent for prohibited activities);
- (b) conditions requiring approvals to be obtained from the person giving the consent;
- (c) conditions specifying the standard to which the works for which consent has been given must be carried out; and

(d) conditions specifying that the works may be carried out on multiple occasions or within a specified time period only or both.

(3) 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.

(4) Where consent is granted under paragraph (1)(a)—

(a) such consent shall be valid for a period of two years beginning with the date of its grant; and

(b) the works for which such consent is granted may only be carried out once,

unless otherwise stated in a condition within paragraph (2)(d).

(5) A grant of consent under paragraph (1)(a) shall (except 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.

PART 5

APPEALS

Application of Part 5 and interpretation

18.—(1) This Part applies in relation to every appeal—

(a) under regulation 19 (“a tree preservation order appeal”); or

(b) against a notice served under section 207(1)(**18**) (enforcement of duties as to replacement of trees) (“a tree replacement notice appeal”),

which is to be disposed of without a hearing or inquiry to which rules under section 9 of the Tribunals and Inquiries Act 1992(**19**) (procedure in connection with statutory inquiries) apply.

(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 appellants and the relevant authority;

“preliminary information” means the documents supplied by the relevant authority in accordance with regulation 20;

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

“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.

Appeals

19.—(1) Where the authority—

(a) refuse an application for consent under an order or grant consent subject to conditions;

(18) Section 207(1) was amended by section 192(8) of, and paragraphs 7 and 12 of Schedule 8 to, the Planning Act 2008.

(19) 1992 c.53; there are amendments to section 9 but none is relevant to these Regulations.

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

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

(2) Any appeal under this regulation shall be made by notice in writing addressed to the Secretary of State and such notice shall be served—

- (a) in respect of a matter mentioned in paragraph (1)(a) or (b), within the period of 28 days from the receipt of notification of the authority's decision or such longer period as the Secretary of State may allow;
- (b) in respect of such a failure as is mentioned in paragraph (1)(c)—
 - (i) where the authority have informed the applicant that the application has been refused or granted subject to conditions before an appeal has been made, within the period of 28 days from the receipt of notification of the authority's decision or such longer period as the Secretary of State may allow; or
 - (ii) where the authority have not so informed the applicant, at any time after the expiration of the period mentioned in paragraph (1)(c).

(3) In the case of such failure as is mentioned in paragraph (1)(c) and where 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 send to the relevant authority a copy of the notice of appeal, and shall do so at the same time as the appellant gives written notice to the Secretary of State of the tree preservation order appeal or tree replacement notice appeal, as the case may be.

(5) Schedule 6 to the Town and Country Planning Act 1990 (determination of certain appeals by person appointed by Secretary of State) applies to appeals under this regulation.

Preliminary information

20. 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; and
 - (ii) the decision of the relevant authority, if any, including any condition 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 a contravention of these regulations within section 206(1)(a)(**20**) (removal, uprooting or destruction of tree in contravention of tree preservation regulations), the date of that breach, if not included in the notice; and

- (iv) where the notice has been issued as a result of a failure to replace a protected tree removed under the exception in section 206(1)(b)(21) (dead or dangerous tree), the date of the alleged failure, if not included in the notice.

Questionnaire

21.—(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 the Secretary of State and copy to the appellant a completed questionnaire and a copy of the documents referred to in that questionnaire.

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

Further information

22.—(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 the Secretary of State or the appointed person may specify.

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

Determination

23.—(1) Where an appeal is made under regulation 19 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 the Secretary of State in the first instance.

(2) Before determining an appeal under regulation 19 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 an appointed person.

(3) Where under regulation 22, 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.

(4) Subject to paragraph (2), the provisions of regulations 17(1) and 17(3) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under regulation 19 as they apply in relation to an application for consent under regulation 17 which falls to be determined by the authority.

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

(6) For the purposes of the application of paragraph (1) in relation to an appeal made under paragraph 19(1)(c), it shall be assumed that the authority decided to refuse the application in question.

(7) 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 that appeal;

(21) For the meaning of “prescribed time” in section 206(1)(b), *see* regulation 25 below.

- (b) that the address for that purpose is the address incorporated into, or otherwise logically associated with, that appeal; and
- (c) that deemed agreement under this paragraph shall subsist until the appellant 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.

PART 6

COMPENSATION

Compensation

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

- (a) the refusal of any consent required under these Regulations;
- (b) the grant of any such consent subject to conditions; or
- (c) the refusal of any consent, agreement or approval required under such a condition,

that person 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 regulation—

- (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.

(3) Where the authority refuse consent under these Regulations for the felling in the course of forestry operations of any part of a woodland area—

- (a) they shall not be required to pay compensation to any person other than the owner of the land;
- (b) they shall not be required to pay compensation if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is subject to an appeal to the Secretary of State, the date of the final determination of the appeal; and
- (c) 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 case other than those mentioned in paragraphs (2) or (3), 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 application and the documents and particulars accompanying it, 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 that person's 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 these Regulations or the grant of any such consent subject to conditions.
- (5) Subsections (3) to (5) of section 11 of the Forestry Act 1967⁽²²⁾ (terms of compensation on refusal of licence) shall apply to the assessment of compensation under paragraph (3) as they apply to the assessment of compensation where a felling licence is refused under section 10 of that Act⁽²³⁾ (application for felling licence and decision of Commissioners thereon), as if—
- (a) for any reference to a felling licence there were substituted a reference to a consent required under these Regulations; and
- (b) for the reference to the Commissioners there were substituted a reference to the authority.
- (6) Claims for payment of compensation by virtue of paragraph (1) shall be made in writing to and paid by the authority.
- (7) (a) This paragraph applies where—
- (i) an authority have granted consent under regulation 17(1) and (3) for felling in the course of forestry operations all or any part of a woodland area to which an order applies;
- (ii) such consent is granted subject to a condition under regulation 17(2)(a) requiring trees to be planted; and
- (iii) the Forestry Commissioners decide not to make a grant or loan under section 1 of the Forestry Act 1979⁽²⁴⁾ (finance for forestry) in respect of the planting required by such a condition as is mentioned in paragraph (ii) for the reason that such a condition frustrates the use of the woodland area for the growing of timber or other forest products for commercial purposes and in accordance with the rules or practice of good forestry;
- (b) where this paragraph applies, the Forestry Commissioners shall, at the request of the person under a duty to comply with such a condition as is mentioned in sub-paragraph (a) (ii), give a certificate stating whether they have decided not to make such a grant or loan as is mentioned in sub-paragraph (a)(iii) and, if so, the grounds for their decision.
- (8) Any question of disputed compensation under this regulation shall be referred to and determined by the Upper Tribunal⁽²⁵⁾.
- (9) In relation to the determination of any such question, the provisions of section 4 of the Land Compensation Act 1961⁽²⁶⁾ (costs for proceedings of Upper Tribunal) and sections 22 (Tribunal Procedure Rules) and 29 (costs or expenses) of the Tribunals, Courts and Enforcement Act 2007 shall apply subject to any necessary modifications and to the provisions of these Regulations.
- (10) This regulation shall not apply to orders to which regulations 26(3) or 26(4) apply.
- (11) In this regulation—
- “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 by section 34 of the Forestry Act 1967⁽²⁷⁾ (meaning of “owner”).

⁽²²⁾ 1967 c. 10.

⁽²³⁾ There are amendments to section 10 but none is relevant to these Regulations.

⁽²⁴⁾ 1979 c. 21; section 1 was amended by S.I. 2000/746; there are other amendments not relevant to these Regulations.

⁽²⁵⁾ Created under section 3 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

⁽²⁶⁾ 1961 c. 33; section 4 was amended by S.I. 2009/1307.

⁽²⁷⁾ There are amendments to section 34 but none is relevant to these Regulations.

PART 7

MISCELLANEOUS PROVISIONS

Prescribed time

25. The prescribed(**28**) time for the purposes of section 206(1)(b) (replacement of trees) and section 213(1)(b)(**29**) (enforcement of controls as respects trees in conservation areas) is whenever the cutting down or uprooting of a tree is authorised only by virtue of regulation 14(1)(a)(i) or 14(1)(c).

Revocation, transitional, transitory and saving provisions

26.—(1) The Town and Country Planning (Trees) Regulations 1999(**30**) (“the 1999 Regulations”), so far as they apply to England, the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008(**31**) and the Town and Country Planning (Trees) (Amendment No. 2) (England) Regulations 2008(**32**) are revoked except—

- (a) for regulation 17 of the 1999 Regulations (amendment of the Town and Country Planning General Regulations 1992(**33**)); and
- (b) so far as is necessary for the continuing application of orders to which paragraphs (2) to (4) apply, certificates to which paragraph (3)(b) applies and directions to which paragraph (5) applies.

(2) Where, at commencement, an order has been made by an authority but not confirmed, that order—

- (a) shall not take effect, other than provisionally in the case of an order which includes a direction by the authority that the provisions of section 201 (provisional tree preservation orders)(**34**) shall apply (c), unless and until confirmed by the authority; and
- (b) must be confirmed no later than the expiration of the period of six months beginning with commencement.

(3) (a) This paragraph and paragraph (4) apply to certain orders made by an authority prior to 2nd August 1999;

(b) where, at commencement—

- (i) the provisions of paragraph (4)(a)(i) are satisfied;
- (ii) a certificate was issued by the authority when refusing or granting consent subject to conditions certifying that the authority were satisfied that the refusal or condition is in the interests of good forestry or that the trees have an outstanding or special amenity value; and
- (iii) that certificate is still in force,

that certificate shall continue in force, in spite of anything in these Regulations, in accordance with the terms of the certificate for a period of 12 months following the date of grant or refusal, or the date of a decision by the Secretary of State following an appeal, whichever is the later.

(4) Where, at commencement—

(28) For the meaning of “prescribed” see section 336(1) of the Town and Country Planning Act 1990.

(29) Section 213 was amended by section 192(8) of, and paragraphs 7 and 16 of Schedule 8 to, the Planning Act 2008.

(30) S.I. 1999/1892; amended by S.I. 2008/2260 and 2008/3202.

(31) S.I. 2008/2260.

(32) S.I. 2008/3202.

(33) S.I. 1992/1492; amended by S.I. 1999/1892 and 1999/1810. There are other amendments not relevant to these Regulations.

(34) Section 201 was repealed by sections 192(1) and (4) and 238 of, and Schedule 13 to, the Planning Act 2008.

- (a) either—
 - (i) an application for consent to carry out works to a tree has been made and the authority have refused that consent or have granted consent subject to conditions; or
 - (ii) an appeal has been made to the Secretary of State—
 - (aa) against a decision of the authority such as is mentioned in paragraph (i); or
 - (bb) following a failure by the authority to determine any application for consent to carry out works to a tree within 8 weeks beginning on the date on which the application was received by the authority,and the Secretary of State has dismissed the appeal or has granted consent subject to conditions;
- (b) the right to claim compensation in respect of that refusal, dismissal or grant has arisen; and
- (c) either no claim for compensation has yet been made or a claim for compensation has been made but not yet determined,

any such claim made prior to commencement or made within 12 months of the date of that refusal, dismissal or grant shall be dealt with in accordance with the provisions contained in that order and regulation 24 shall not apply to that claim.

(5) Where, at commencement, a direction for replanting is in force, it shall continue in force until the expiry of that direction, in spite of anything in these Regulations.

Signed by authority of the Secretary of State

Bob Neill
Parliamentary Under Secretary of State
Department for Communities and Local
Government

28th February 2012

SCHEDULE

Regulation 3(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 section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

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

Interpretation

- 2.—(1) In this Order “the authority” means the [name of Council making the Order].

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Effect

- 3.—(1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or

(b) cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of, any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to 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 the tree is planted.

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

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

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

[The Common Seal of [insert name of Council]

was affixed to this Order in the presence of—

.....]

[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 [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]*]

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

.....

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]*]

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

.....

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.

[VARIATION OF ORDER

[This Order was varied by the *[insert name of Council]* on the [] day of *[insert month and year]* by a variation order under reference number *[insert reference number to the variation order]* a copy of which is attached]

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

.....

Authorised by the Council to sign in that behalf]

[REVOCATION OF ORDER

[This Order was revoked by the *[insert name of Council]* on the [] day of *[insert month and year]*]

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

.....

Authorised by the Council to sign in that behalf]

SCHEDULE

Article 3

Specification of trees

Trees specified individually

(encircled in black on the map)

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

Trees specified by reference to an area

(within a dotted black line on the map)

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

Groups of trees

(within a broken black line on the map)

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

Woodlands

(within a continuous black line on the map)

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to England only, substantially revoke and replace the Town and Country Planning (Trees) Regulations 1999, to the extent to which they apply to England. They also revoke the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008 and the Town and Country Planning (Trees) (Amendment No. 2) (England) Regulations 2008.

Part 2 prescribes the form of tree preservation orders and the procedure for their making, provisional effect, confirmation, variation and revocation. The prescribed form is set out in the Schedule to the Regulations.

Part 3 of the Regulations sets out prohibited activities in relation to a tree protected by an order and exceptions. Under regulation 13 a tree protected by a tree preservation order may not be cut down, topped, lopped, uprooted or wilfully damaged or destroyed without the consent of the local planning authority, unless an exception applies. These exceptions are set out in sections 198(7) and 200(1) of the Town and Country Planning Act 1990, and in regulation 14 of the Regulations.

Section 198(7) provides exceptions 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 (c. 69) 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(1) provides that a tree preservation order does not have effect in respect of anything done by or on behalf of Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967 or otherwise under their management or supervision or anything done by or on behalf of any other person under a plan of works approved by the Forestry Commissioners under a forestry dedication covenant (as defined in section 5 of the Forestry Act 1967) or under conditions of a grant or loan made under section 1 of the Forestry Act 1979 (c. 21).

Regulation 14 contains exceptions to the requirement for consent and regulation 15 contains exceptions for trees in conservation areas.

Part 4 of the Regulations prescribes the procedure for applications for consent under tree preservation orders.

Part 5 prescribes the procedure for appeals and for their determination. Regulation 19 grants a right of appeal in respect of a refusal to grant consent, a grant of consent subject to conditions or a failure to determine an application for consent within the prescribed time period.

In Part 6, regulation 24 provides for compensation claims, subject to exceptions, to be made where loss or damage has been incurred as a consequence of a refusal to grant consent, a grant of consent subject to conditions or a refusal of approval required under a condition.

Part 7 contains miscellaneous provisions. Regulation 25 provides that the prescribed time for the purposes of sections 206(1)(b) (replacement trees) and 213(1)(b) (enforcement of controls as respects trees in conservation areas) is whenever the cutting down or uprooting of a tree is authorised only by virtue of regulations 14(1)(a)(i) or 14(1)(c) (dead or dangerous trees).

Regulation 26 revokes the Town and Country Planning (Trees) Regulations 1999, the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008 and the Town and Country Planning (Trees) (Amendment No.2) (England) Regulations 2008, subject to transitional, transitory and saving provisions in respect of certain classes of order. This regulation also saves regulation 17

of the Town and Country Planning (Trees) Regulations 1999 (amendment to the Town and Country Planning General Regulations 1992).

Under section 193 of the Planning Act 2008 (c. 29), all tree preservation orders made prior to the date on which these Regulations come into force take effect with the omission of all of their provisions other than any that identify the order or identify the trees, groups of trees or woodlands to which the order applies.

A full impact assessment of the effect that this instrument will have on the costs of business, charities and the voluntary sector has been prepared in relation to these Regulations. The assessment has been placed in the Library of each House of Parliament and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk). The assessment may also be accessed at www.communities.gsi.gov.uk.