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STATUTORY INSTRUMENTS

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**2012 No. 605**

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

**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<sup>(1)</sup> (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<sup>(2)</sup> (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.
- (a) (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<sup>(3)</sup> (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<sup>(4)</sup>.
- (9) In relation to the determination of any such question, the provisions of section 4 of the Land Compensation Act 1961<sup>(5)</sup> (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<sup>(6)</sup> (meaning of “owner”).

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(1) 1967 c. 10.

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

(3) 1979 c. 21; section 1 was amended by S.I. 2000/746; there are other amendments not relevant to these Regulations.

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

(5) 1961 c. 33; section 4 was amended by S.I. 2009/1307.

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