



# Planning Act 2008

## 2008 CHAPTER 29

### PART 9

#### CHANGES TO EXISTING PLANNING REGIMES

### CHAPTER 2

#### OTHER CHANGES TO EXISTING PLANNING REGIMES

#### *Trees*

#### **192 Tree preservation orders**

- (1) Chapter 1 of Part 8 of TCPA 1990 (special controls: trees) is amended as follows.
- (2) In section 198 (power to make tree preservation orders) omit—
  - (a) subsections (3) and (4) (provision that may be made by tree preservation orders),
  - (b) subsection (6) (matters to which tree preservation orders do not apply), and
  - (c) subsections (8) and (9) (power to make provision about application for consent under tree preservation order).
- (3) Omit section 199 (form of and procedure applicable to tree preservation orders).
- (4) Omit section 201 (provisional tree preservation orders).
- (5) In section 202 (power for Secretary of State or Welsh Ministers to make tree preservation orders), omit subsection (3) (procedure applicable to orders made by Secretary of State or Welsh Ministers).
- (6) Omit sections 203 to 205 (compensation in connection with tree preservation orders).
- (7) After section 202 insert—

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### **“202A Tree preservation regulations: general**

- (1) The appropriate national authority may by regulations make provision in connection with tree preservation orders.
- (2) Sections 202B to 202G make further provision about what may, in particular, be contained in regulations under subsection (1).
- (3) In this section and those sections “tree preservation order” includes an order under section 202(1).
- (4) In this Act “tree preservation regulations” means regulations under subsection (1).
- (5) In subsection (1) “the appropriate national authority”—
  - (a) in relation to England means the Secretary of State, and
  - (b) in relation to Wales means the Welsh Ministers.
- (6) Section 333(3) does not apply in relation to tree preservation regulations made by the Welsh Ministers.
- (7) Tree preservation regulations made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.

### **202B Tree preservation regulations: making of tree preservation orders**

- (1) Tree preservation regulations may make provision about—
  - (a) the form of tree preservation orders;
  - (b) the procedure to be followed in connection with the making of tree preservation orders;
  - (c) when a tree preservation order takes effect.
- (2) If tree preservation regulations make provision for tree preservation orders not to take effect until confirmed, tree preservation regulations may—
  - (a) make provision for tree preservation orders to take effect provisionally until confirmed;
  - (b) make provision about who is to confirm a tree preservation order;
  - (c) make provision about the procedure to be followed in connection with confirmation of tree preservation orders.

### **202C Tree preservation regulations: prohibited activities**

- (1) Tree preservation regulations may make provision for prohibiting all or any of the following—
  - (a) cutting down of trees;
  - (b) topping of trees;
  - (c) lopping of trees;
  - (d) uprooting of trees;
  - (e) wilful damage of trees;
  - (f) wilful destruction of trees.

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- (2) A prohibition imposed on a person may (in particular) relate to things whose doing the person causes or permits (as well as to things the person does).
- (3) A prohibition may be imposed subject to exceptions.
- (4) In particular, provision may be made for a prohibition not to apply to things done with consent.
- (5) In this section “tree” means a tree in respect of which a tree preservation order is in force.

#### **202D Tree preservation regulations: consent for prohibited activities**

- (1) This section applies if tree preservation regulations make provision under section 202C(4).
- (2) Tree preservation regulations may make provision—
  - (a) about who may give consent;
  - (b) for the giving of consent subject to conditions;
  - (c) about the procedure to be followed in connection with obtaining consent.
- (3) The conditions for which provision may be made under subsection (2)(b) include—
  - (a) conditions as to planting of trees;
  - (b) conditions requiring approvals to be obtained from the person giving the consent;
  - (c) conditions limiting the duration of the consent.
- (4) The conditions mentioned in subsection (3)(a) include—
  - (a) conditions requiring trees to be planted;
  - (b) conditions about the planting of any trees required to be planted by conditions within paragraph (a), including conditions about how, where or when planting is to be done;
  - (c) conditions requiring things to be done, or installed, for the protection of any trees planted in pursuance of conditions within paragraph (a).
- (5) In relation to any tree planted in pursuance of a condition within subsection (4)
  - (a), tree preservation regulations may make provision —
    - (a) for the tree preservation order concerned to apply to the tree;
    - (b) authorising the person imposing the condition to specify that the tree preservation order concerned is not to apply to the tree.
- (6) “The tree preservation order concerned” is the order in force in relation to the tree in respect of which consent is given under tree preservation regulations.
- (7) The provision that may be made under subsection (2)(c) includes provision about applications for consent, including provision as to—
  - (a) the form or manner in which an application is to be made;
  - (b) what is to be in, or is to accompany, an application.
- (8) Tree preservation regulations may make provision for appeals—
  - (a) against refusal of consent;

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- (b) where there is a failure to decide an application for consent;
  - (c) against conditions subject to which consent is given;
  - (d) against refusal of an approval required by a condition;
  - (e) where there is a failure to decide an application for such an approval.
- (9) Tree preservation regulations may make provision in connection with appeals under provision made under subsection (8), including—
- (a) provision imposing time limits;
  - (b) provision for further appeals;
  - (c) provision in connection with the procedure to be followed on an appeal (or further appeal);
  - (d) provision about who is to decide an appeal (or further appeal);
  - (e) provision imposing duties, or conferring powers, on a person deciding an appeal (or further appeal).

### **202E Tree preservation regulations: compensation**

- (1) Tree preservation regulations may make provision for the payment of compensation—
- (a) where any consent required under tree preservation regulations is refused;
  - (b) where any such consent is given subject to conditions;
  - (c) where any approval required under such a condition is refused.
- (2) Tree preservation regulations may provide for entitlement conferred under subsection (1) to apply only in, or to apply except in, cases specified in tree preservation regulations.
- (3) Tree preservation regulations may provide for entitlement conferred by provision under subsection (1) to be subject to conditions, including conditions as to time limits.
- (4) Tree preservation regulations may, in relation to compensation under provision under subsection (1), make provision about—
- (a) who is to pay the compensation;
  - (b) who is entitled to the compensation;
  - (c) what the compensation is to be paid in respect of;
  - (d) the amount, or calculation of, the compensation.
- (5) Tree preservation regulations may make provision about the procedure to be followed in connection with claiming any entitlement conferred by provision under subsection (1).
- (6) Tree preservation regulations may make provision for the determination of disputes about entitlement conferred by provision under subsection (1), including provision for and in connection with the referral of any such disputes to, and their determination by, <sup>F1</sup>...the First-tier Tribunal or the Upper Tribunal.

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### **202F Tree preservation regulations: registers**

Tree preservation regulations may make provision for the keeping of, and public access to, registers containing information related to tree preservation orders.

### **202G Tree preservation regulations: supplementary**

- (1) Tree preservation regulations may provide for the application (with or without modifications) of, or make provision comparable to, any provision of this Act mentioned in subsection (2).
- (2) The provisions are any provision of Part 3 relating to planning permission or applications for planning permission, except sections 56, 62, 65, 69(3) and (4), 71, 91 to 96, 100 and 101 and Schedule 8.
- (3) Tree preservation regulations may make provision comparable to—
  - (a) any provision made by the Town and Country Planning (Tree Preservation Order) Regulations 1969 or the Town and Country Planning (Trees) Regulations 1999;
  - (b) any provision that could have been made under section 199(2) and (3).
- (4) Tree preservation regulations may contain incidental, supplementary, consequential, transitional and transitory provision and savings.”
- (8) Schedule 8 makes further amendments in connection with tree preservation orders.

#### **Textual Amendments**

- F1** Words in s. 192(7) omitted (1.6.2009) by virtue of [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 1 para. 295](#) (with Sch. 5)

#### **Commencement Information**

- II** [S. 192](#) in force at 6.4.2012 for E. by [S.I. 2012/601](#), [art. 2\(a\)](#)

## **193 Existing tree preservation orders: transitional provision**

- (1) This section applies to a tree preservation order made before the appointed day.
- (2) With effect from the beginning of the appointed day, a tree preservation order to which this section applies shall have effect with the omission of all of its provisions other than any that have effect for the purpose of identifying the order or for the purpose of identifying the trees, groups of trees or woodlands in respect of which the order—
  - (a) is in force, or
  - (b) may at any later time be in force.
- (3) In this section—

“the appointed day”—

  - (a) in relation to England means the day on which subsection (1) comes fully into force in relation to England, and

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- (b) in relation to Wales means the day on which subsection (1) comes fully into force in relation to Wales;
- “tree preservation order” means an order made under, or an order having effect as if made under, section 198(1) of TCPA 1990.

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**Commencement Information**

**I2** S. 193 in force at 6.4.2012 for E. by S.I. 2012/601, art. 2(b)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 10A inserted by [2023 c. 55 Sch. 12 para. 1](#)
- s. 37(3A) inserted by [2021 c. 30 Sch. 15 para. 7](#)
- s. 37(3A) inserted by [2021 c. 30 Sch. 15 para. 7](#)
- s. 103(1A) inserted by [2021 c. 30 Sch. 15 para. 2](#)
- s. 103(1A) inserted by [2021 c. 30 Sch. 15 para. 2](#)
- s. 104(3)-(3B) substituted for s. 104(3) by [2021 c. 30 Sch. 15 para. 3\(2\)](#)
- s. 104(3)-(3B) substituted for s. 104(3) by [2021 c. 30 Sch. 15 para. 3\(2\)](#)
- s. 105(3)(4) inserted by [2021 c. 30 Sch. 15 para. 4\(1\)](#)
- s. 105(3)(4) inserted by [2021 c. 30 Sch. 15 para. 4\(1\)](#)
- s. 120(2)(c) inserted by [2021 c. 30 Sch. 15 para. 8](#)
- s. 120(2)(c) inserted by [2021 c. 30 Sch. 15 para. 8](#)
- s. 223(1)(za) inserted by [2023 c. 55 s. 139\(6\)](#)
- s. 232(5)(f) inserted by [2021 c. 30 Sch. 15 para. 9\(2\)](#)
- s. 232(5)(f) inserted by [2021 c. 30 Sch. 15 para. 9\(2\)](#)
- Sch. 2A inserted by [2021 c. 30 Sch. 15 para. 5](#)
- Sch. 2A inserted by [2021 c. 30 Sch. 15 para. 5](#)