

**2003 No. 444**

**PLANNING**

**The Planning (Trees) Regulations (Northern Ireland) 2003**

*Made - - - - - 9th October 2003*

*Coming into operation 12th November 2003*

The Department of the Environment, in exercise of its powers conferred by Articles 65(2), 66B and 129 of the Planning (Northern Ireland) Order 1991(a) and all other powers enabling it in that behalf, hereby makes the following Regulations:

**PART I  
GENERAL**

**Citation, commencement and interpretation**

**1.—**(1) These Regulations may be cited as the Planning (Trees) Regulations (Northern Ireland) 2003 and shall come into operation on 12th November 2003.

(2) In these Regulations –

“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;

“person interested”, in relation to land affected by an order, means the owner and occupier of the land;

and any reference in these Regulations to a numbered Article is a reference to the Article so numbered in the Planning (Northern Ireland) Order 1991.

**PART II  
TREE PRESERVATION ORDERS**

**Form of tree preservation order**

**2.—**(1) An order shall be in the form set out in the Schedule and –

(a) shall specify the trees, groups of trees or woodlands to which it relates;

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(a) S.I. 1991/1220 (N.I. 11) as amended by Art. 26 (S.I. 2003/430 (N.I.8)). Art. 2(2) contains definitions of “the Department” and “prescribed”.

- (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 be accompanied by the map referred to in paragraph (1)(c); and where a map so accompanies an order it shall be treated as part of that order.

(3) The map contained in, or accompanying, 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 Department 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 Department 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 Department;
- (d) a copy of regulation 4; and
- (e) where the order contains a direction under Article 65A (provisional tree preservation orders), a statement of the effect of that direction.

(3) Subject to regulations 6(c), 7(c) and 8(1)(c), a copy of the order shall be made available for public inspection in the locality in which the land to which the order relates is situated at all reasonable hours.

### **Objections and representations**

**4.**—(1) Objections and representations –

- (a) shall be made in writing and delivered so as to arrive with the Department not later than the date specified under regulation 3(2)(c);
- (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.

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

**5.**—(1) Where the Department, after it has considered objections and representations duly made in respect of it and not withdrawn, decides to confirm an order, it may do so with or without modification.

(2) 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.

(3) Where an order is confirmed with modifications, the modifications shall be indicated in the order.

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

6. As soon as practicable after confirming an order, the Department shall –
- (a) notify the persons interested in the land affected by the order –
    - (i) of the confirmation of the order; and
    - (ii) of the date on which the order was confirmed;
  - (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(3).

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

7. Where the Department decides not to confirm an order it shall as soon as practicable –
- (a) endorse the order with a statement to that effect and with the date of its decision;
  - (b) notify the persons interested in the land affected by the order of its decision; and
  - (c) withdraw from public inspection the copy of the order made available in accordance with regulation 3(3).

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

- 8.—(1) Where the Department revokes an order it 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(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**

- 9.—(1) Article 66A (preservation of trees in conservation areas) shall not apply to -
- (a) the cutting down, uprooting, topping or lopping of a tree in the circumstances mentioned in Article 65(3) or in the Third Schedule of the prescribed form of tree preservation order set out in the Schedule;
  - (b) 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
  - (c) 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)(b)(i) and (c) or paragraph (1)(b)(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  
REVOCATION AND SAVINGS

**Revocation and savings**

**10.**—(1) Subject to paragraph (2), the Planning (Tree Preservation Order) Regulations (Northern Ireland) 1973<sup>(a)</sup> are hereby revoked.

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

Sealed with the Official Seal of the Department of the Environment on 9th October 2003.

(L.S.)

*I. Maye*

A Senior Officer of the Department of the Environment

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<sup>(a)</sup> S.R. 1973 No. 273

## SCHEDULE

Regulation 2(1)

### FORM OF TREE PRESERVATION ORDER

PLANNING (NORTHERN IRELAND) ORDER 1991  
PLANNING (TREES) REGULATIONS (NORTHERN IRELAND) 2003

TREE PRESERVATION ORDER

at

*(address of the land)*

The Department of the Environment (in this Order called “the Department”) in pursuance of the powers conferred upon it by Articles 65, [65A] and [115] of the Planning (Northern Ireland) Order 1991 HEREBY ORDERS that no person shall, except with the consent of the Department and in accordance with the conditions, if any, imposed on such consent, uproot, wilfully damage, cut down, top, lop, or wilfully destroy or cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of any tree specified in the First Schedule or comprised in a group of trees or in a woodland therein specified, the position of which trees, groups of trees or woodlands is defined in the manner indicated in the First Schedule on the annexed maps which maps shall for the purpose of such definition prevail where any ambiguity arises between them and the specification in the First Schedule.

[The Department HEREBY ORDERS that Article 65A (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on *[insert date]*.]

The Order is subject to the provisions of the Second Schedule and to the exemptions specified in the Third Schedule.

Sealed with the Official Seal of the Department of the Environment this  day of  *[insert date]*.

Senior Officer of the Department of the Environment

### FIRST SCHEDULE

*[Particulars of trees protected by the Order as also specified on the attached map.]*

### SECOND SCHEDULE

#### **Application for consent to cut down, top, lop or uproot trees**

1. An application for consent made to the Department shall be in writing containing a statement of reasons for making the application, and specifying, by reference if necessary to a map, the trees or woodland to which the application relates and the operations for which consent is required.

2. The Department may grant consent to an application either unconditionally, or subject to such conditions (including conditions requiring the replacement of any tree or trees) as the Department may think fit, or may refuse consent.

#### **Appeal against refusal of consent**

3.—(1) Where an application to the Department for consent is refused or is granted subject to conditions, the applicant, if he is aggrieved by the Department’s decision, may by notice under this paragraph appeal to the Planning Appeals Commission.

(2) Any such notice shall be served in writing within six months from the receipt of notification of the decision, or such longer period as the Planning Appeals Commission may allow.

(3) The Planning Appeals Commission, subject to the following provisions of this paragraph, may allow or dismiss the appeal, or reverse or vary any part of the decision, whether the appeal relates to that part thereof or not.

(4) Before determining an appeal the Planning Appeals Commission shall, if either the appellant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the Commission.

#### **Appeal in default of decision**

4. Where an application for consent is made to the Department, then unless within two months from the date of its receipt, or within such extended period as may be agreed upon in writing between the applicant and the Department, the Department gives notice to the applicant of its decision on the application, the provisions of paragraph 3 shall apply in relation to the application as if consent had been refused by the Department and notification as if at the end of the said period of two months, or at the end of the said extended period, as may be the case.

#### **Revocation or modification of consent**

5.—(1) If it appears to the Department that it is expedient to revoke or modify any consent granted on an application made under paragraph 1, the Department may, subject to sub-paragraphs (2) and (3), by order revoke or modify the consent to such extent as it considers expedient.

(2) Before making such an order the Department shall serve notice on the owner and on the occupier of the land affected and on any other person who in its opinion will be affected by the order.

(3) The power to revoke or modify a consent may be exercised at any time before the operations for which consent has been given have been completed, but any such revocation or modification shall not affect so much of those operations as has been carried out.

#### **Compensation**

6. Subject to the provisions of this Order any person who has suffered loss or damage in consequence of –

- (a) any refusal of consent to cut down, uproot, top or lop a tree which is the subject of a Tree Preservation Order; or
- (b) the granting of any such consent subject to conditions,

shall if he makes a claim to the Department within the time and in the manner prescribed by paragraph 9 be entitled subject to such exceptions as may be prescribed to recover from the Department compensation in respect of such loss or damage.

7. No claim may be made under this Order if the amount in respect of which the claim would otherwise have been made is less than £500.

8. No compensation shall be payable to a person:

- (a) for loss of development value<sup>(a)</sup> or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the statement of reasons as set out in paragraph 1 and any documents or other evidence submitted in support of any such statement, was not reasonably foreseeable when the consent was refused or was granted subject to conditions; or
- (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.

9.—(1) A claim for compensation shall be in writing, stating the reasons for that claim and shall be made by serving it on the Department.

(2) The time within which any such claim shall be made shall be a period of six months from the date of the decision of the Department, or where an appeal has been made to the Planning Appeals Commission against the decision of the Department from the date of the decision of the Commission on the Appeal.

10. The Lands Tribunal shall determine any question of disputed compensation.

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(a) “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

**[Orders made under Article 115 (Tree preservation orders in anticipation of disposal of Crown land)**

11. This Order takes effect in accordance with Article 115(3).].

NOTE: Any person who, in contravention of the provisions of this Order cuts down, uproots or wilfully destroys a tree, or wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it is guilty of an offence under Article 66 of the Planning (Northern Ireland) Order 1991 and liable on summary conviction to a fine not exceeding £30,000; and on conviction on indictment, to a fine. In determining the amount of fine to be imposed on a person convicted of such an offence the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

Any person who contravenes the provisions of this Order otherwise than as mentioned above, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

THIRD SCHEDULE

This Order shall not apply to require the consent of the Department to: –

1. The cutting down, topping, lopping or uprooting of a tree exempted from the provisions of this Order by Article 65(3) of the Planning (Northern Ireland) Order 1991, namely a tree which is dying or dead or has become dangerous, or the cutting down, topping, lopping or uprooting of which is in compliance with obligations imposed by or under any statutory provision or so far as may be necessary for the prevention or abatement of a nuisance.

2. The cutting down, topping, lopping or uprooting of a tree –

- (a) in pursuance of the power conferred on the operator by virtue of section 10 of and paragraph 19, Schedule 2 of the Telecommunications Act 1984;
- (b) by a statutory undertaker, (defined as such by Article 2(2) of the Planning (Northern Ireland) Order 1991), where the land on which the tree is situated is operational land (within the meaning of the Planning (General Development) Order (Northern Ireland) 1993) 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 Planning (General Development) Order (Northern Ireland) 1993;
- (c) where required for the purpose of carrying out development authorised by a planning permission granted on an application made under Part IV of the Planning (Northern Ireland) Order 1991; or
- (d) which is a fruit 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.

3. The pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit.

## EXPLANATORY NOTE

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

These Regulations replace the Planning (Tree Preservation Order) Regulations (Northern Ireland) 1973.

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, modification, confirmation and revocation. The prescribed form is set out in the Schedule to the Regulations.

Unless the works proposed are exempted by virtue of Article 65(3) of the Planning (Northern Ireland) Order 1991 or the Third Schedule of the prescribed form, the consent of the Department is required before any tree protected by the order may be cut down, topped, lopped, uprooted, damaged or destroyed.

The exemptions for which Article 65(3) 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 any statutory provision or so far as may be necessary for the prevention or abatement of a nuisance.

Paragraphs 6 to 10 of the Second Schedule of the prescribed form provides for compensation in respect of the refusal of consents or the grant of consents subject to conditions.

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

Regulation 10 revokes, with savings, the Planning (Tree Preservation Order) Regulations (Northern Ireland) 1973.

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