

**EXPLANATORY MEMORANDUM TO**  
**THE PLANNING (TREES) REGULATIONS (NORTHERN IRELAND) 2015**  
**2015 No. 84**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department of the Environment to accompany the above Statutory Rule which is laid before the Northern Ireland Assembly.
- 1.2 This Statutory Rule is made under sections 122(4), 128 and 247(1) and (6) of the Planning Act (Northern Ireland) 2011.
- 1.3 The Rule is due to come into operation on 1 April 2015.

**2. Purpose**

- 2.1 The main purpose of this Statutory Rule is to transfer the powers associated with tree preservation orders from central government to councils.

**3. Background**

- 3.1 Part 1 of the Regulations defines terms used in the regulations.
- 3.2 Part 2 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.
- 3.3 Unless the works proposed are exempted by virtue of section 122(5) of the Planning Act (Northern Ireland) 2011 or schedule 3 of the prescribed form, the consent of the council is required before any tree protected by the order may be cut down, uprooted, topped, lopped, damaged or destroyed.
- 3.4 The exemptions for which section 122(5) provides relate to the cutting down, uprooting, topping or lopping of trees which are dead or have become dangerous, or by 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.
- 3.5 Paragraphs 2 to 6 of schedule 2 of the prescribed form provides for compensation in respect of the refusal of consent subject to conditions.
- 3.6 Part 3 of the Regulations makes special provision in relation to trees in conservation areas.
- 3.7 Part 4 of the Regulations replaces the Planning (Trees) Regulations (Northern Ireland) 2003 and makes transitional provisions.

#### **4. Consultation**

- 4.1 This is a purely technical amendment associated with the transfer of existing powers to councils. No changes are made to existing policy. Thus the Department did not consult on the Statutory Rule.

#### **5. Equality Impact**

- 5.1 Equality Impact Screenings carried out in respect of these proposals found no evidence of any differential impact on any of the section 75 categories.

#### **6. Regulatory Impact**

- 6.1 A Regulatory Impact Assessment was carried out and is attached at Annex A.

#### **7. Financial Implications**

- 7.1 There will be costs for councils associated with surveying and applying a tree preservation order. However, the financial implications for local government of the move to a two tier system have been addressed in the financial package being transferred to the new councils.

#### **8. Section 24 of the Northern Ireland Act 1998**

- 8.1 The Department considers that the legislation complies with the requirements of section 24 of the Northern Ireland Act 1998.

#### **9. EU Implications**

- 9.1 There are no EU transpositional implications.

#### **10. Parity or Replicatory Measure**

- 10.1 This is not a parity or replicatory measure.

#### **11. Additional Information**

- 11.1 Not applicable.

**REGULATORY IMPACT ASSESSMENT (FINAL)**  
**THE PLANNING (TREES) REGULATIONS (NORTHERN IRELAND) 2015**  
**2015 No. [XXXX]**

## **1. Title of Proposal**

The Planning (Trees) Regulations (Northern Ireland) 2015.

## **2. Purpose and intended effect of measure**

### **a) The Objective**

The objective of the Regulations is to support planning reform and the transfer of planning powers to the new district councils in relation to tree protection. Under the review of public administration, responsibility for the majority of planning functions currently carried out by the Department of the Environment (DOE) will transfer to district councils. The Regulations will allow councils to exercise the tree preservation order powers (in line with section 121 – 128 of the Planning Act (Northern Ireland) 2011 – “the 2011 Act”) following the transfer of planning functions in April 2015. The Regulations replace the provisions of the existing Planning (Trees) Regulations (Northern Ireland) 2003 making the necessary technical amendments which allow councils to discharge these functions in line with existing policies but within the new two-tier planning system.

### **b) the Background**

The regulations make provision for the new councils to make and confirm tree preservation orders (TPOs) in relation to trees which, in a council’s opinion, may be under threat and which should be protected. They also provide that previous TPOs made by the Department remain in place so that there is no ‘gap’ in protection. These powers will be available to councils when they take over planning functions in April 2015. The Regulations will provide that TPO provisions may be delivered in an effective and consistent manner across Northern Ireland.

### **c) Risk Assessment and Rationale for Government Intervention**

Current legislation allows for the DOE to exercise TPO powers as the unitary planning authority, however, as part of the two tier planning system, the proposed legislation has been developed to allow councils to exercise these powers in their role as a local planning authorities. No change has been made to existing tree preservation policies and no additional risks are envisaged with transitional arrangements allowing councils to deliver these planning functions. The Planning (Trees) Regulations (Northern Ireland) 2003 were previously assessed with no risks pertaining to their introduction.

### 3. Options Appraisal

#### Option 1 – Do nothing

This is not a viable option as the current provisions set out in the Planning (Trees) Regulations (Northern Ireland) 2003 made under the Planning (Northern Ireland) Order 1991 have to be replaced by subordinate legislation made under the 2011 Act.

#### Option 2 – Introduce regulations transferring tree preservation order powers to councils

Introduce the Planning (Trees) Regulations (Northern Ireland) 2015 to provide for the exercise of TPO powers by councils.

### 4. Benefits and Costs

#### Sectors and groups affected

These Regulations will apply to landowners and applicants for planning permission where sites include or protected trees. . District councils as local planning authorities will be affected by the need to carry out the process correctly and to defend their actions should they be called into question.

#### Benefits

##### Option 1 – Do nothing

This is not a viable option as the current provisions set out in the Planning (Trees) Regulations (Northern Ireland) 2003 have to be replaced under the 2011 Act. If new regulations are not introduced councils cannot properly exercise their powers to protect trees.

##### Option 2 – Introduce regulations transferring tree preservation order powers to councils

The Regulations make provision for district councils to make and confirm TPOs in relation to trees which, in a council's opinion, may be under threat and which should be protected. They also provide that previous TPOs made by the Department remain in place so that there is no 'gap' in protection.

#### Costs

##### Option 1 – Do nothing

While there are no costs associated with this option it is not considered viable as the current provisions set out in the Planning (Trees) Regulations (Northern Ireland) 2003 have to be replaced under the 2011 Act.

## Option 2 – introduce regulations transferring tree preservation order powers to councils

There will be costs for councils associated with surveying and applying a tree preservation order. However, the financial implications for local government of the move to a two tier system have been addressed in the financial package being transferred to the new councils

### **5. Enforcement and Sanctions**

The proposed Planning (Trees) Regulations (Northern Ireland) 2015 are procedural and do not include any provisions for enforcement or sanctions.

### **6. Consideration of Impacts**

#### Equality Impact Assessment

An Equality Impact Assessment screening carried out in respect of the Regulations found no evidence of any negative impact on any of the Section 75 categories.

#### Health Impact

No impact on health has been identified.

#### Human Rights Assessment

The Department considers that the proposed provisions are fully compliant with the Human Rights Act 1998.

#### Rural Impact Assessment

The Department does not consider that there will be any significant differential impact of the proposals between urban and rural areas because of the specific scope and technical nature of the proposals.

### **7. Monitoring and Review**

As no change has been made to existing tree preservation policies and no additional risks are envisaged with transitional arrangements allowing councils to perform these planning functions it is not intended to put in place formal monitoring or review mechanisms. However, where the DOE feels that the processes for making TPOs or applications for works to trees covered by a TPO are not operating effectively, or where such evidence is provided to it, it will undertake an appropriate review. In any event the Department is required to review the implementation of the 2011 Act within 3 years and at least once in every 5 years thereafter.

### **8. Consultation**

The primary legislative powers under which these regulations are made derive from a range of proposals which were the subject of public consultation in 2009 and Assembly scrutiny of the 2011 Act. However, as these regulations constitute technical amendments they have not been subject to public consultation.

## **9. Summary and Recommendations**

The Regulations will ensure that there are robust and workable statutory controls for the management of TPOs and tree protection.

In view of the above, it is recommended that the Regulations are introduced into Northern Ireland law.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by a senior officer of the Department of the Environment.



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Angus Kerr  
Planning Policy Division  
Department of the Environment  
Causeway Exchange  
1-7 Bedford Street  
Belfast  
BT2 7EG