



# Town and Country Planning Act 1990

## 1990 CHAPTER 8

### PART VIII

#### SPECIAL CONTROLS

#### CHAPTER I

#### TREES

#### *Consequences of tree removal, etc.*

#### **206 Replacement of trees.**

- (1) If any tree in respect of which a tree preservation order is for the time being in force—
  - (a) is removed, uprooted or destroyed in contravention of the order, or
  - (b) except in the case of a tree to which the order applies as part of a woodland, is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of section 198(6)(a),it shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.
- (2) The duty imposed by subsection (1) does not apply to an owner if on application by him the local planning authority dispense with it.
- (3) In respect of trees in a woodland it shall be sufficient for the purposes of this section to replace the trees removed, uprooted or destroyed by planting the same number of trees—
  - (a) on or near the land on which the trees removed, uprooted or destroyed stood, or
  - (b) on such other land as may be agreed between the local planning authority and the owner of the land,and in such places as may be designated by the local planning authority.

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- (4) In relation to any tree planted pursuant to this section, the relevant tree preservation order shall apply as it applied to the original tree.
- (5) The duty imposed by subsection (1) on the owner of any land shall attach to the person who is from time to time the owner of the land.

#### Modifications etc. (not altering text)

- C1** S. 206: power to apply conferred (10.11.1993) by 1993 c. 28, s. 171(4)(a); S.I. 1993/2762, art. 3
- C2** S. 206: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), Sch. 1

### 207 Enforcement of duties as to replacement of trees.

- (1) If it appears to the local planning authority that—
  - (a) the provisions of section 206, or
  - (b) any conditions of a consent given under a tree preservation order which require the replacement of trees,
 are not complied with in the case of any tree or trees, that authority may serve on the owner of the land a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified.
- (2) A notice under subsection (1) may only be served within four years from the date of the alleged failure to comply with those provisions or conditions.
- [<sup>F1</sup>(3) A notice under subsection (1) shall specify a period at the end of which it is to take effect.
- <sup>F1</sup>(4) The specified period shall be a period of not less than twenty-eight days beginning with the date of service of the notice.]
- (5) The duty imposed by section 206(1) may only be enforced as provided by this section and not otherwise.

#### Textual Amendments

- F1** S. 207(3)(4) substituted (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 23(1) (with s. 84(5)); S.I. 1991/2905, art.3 (subject to art. 5)

#### Modifications etc. (not altering text)

- C3** S. 207: power to apply conferred (10.11.1993) by 1993 c. 28, s. 171(4)(a); S.I. 1993/2762, art. 3
- C4** S. 207: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), Sch. 1

### 208 Appeals against s. 207 notices.

- (1) A person on whom a notice under section 207(1) is served may appeal to the Secretary of State against the notice on any of the following grounds—
  - (a) that the provisions of section 206 or, as the case may be, the conditions mentioned in section 207(1)(b) are not applicable or have been complied with;

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- [<sup>F2</sup>(aa) that in all the circumstances of the case the duty imposed by section 206(1) should be dispensed with in relation to any tree;]
  - (b) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it;
  - (c) that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;
  - (d) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose.
- [<sup>F3</sup>(2) An appeal under subsection (1) shall be made either—
- (a) by giving written notice of the appeal to the Secretary of State before the end of the period specified in accordance with section 207(3); or
  - (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before the end of that period.]
- (4) [<sup>F4</sup>The notice shall—
- (a) indicate the grounds of the appeal,
  - (b) state the facts on which the appeal is based, and
  - (c) be accompanied by such information as may be prescribed.]
- [<sup>F5</sup>(4A) The power to make regulations under subsection (4)(c) is exercisable by—
- (a) the Secretary of State, in relation to England;
  - (b) the Welsh Ministers, in relation to Wales.]
- [<sup>F6</sup>(4B) Section 333(3) does not apply in relation to regulations under subsection (4)(c) made by the Welsh Ministers.]
- [<sup>F7</sup>(4C) Regulations under subsection (4)(c) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.]
- (5) On [<sup>F8</sup>an appeal under subsection (1)] the Secretary of State shall, if either the appellant or the local planning authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
  - (6) Where such an appeal is brought, the notice under section 207(1) shall be of no effect pending the final determination or the withdrawal of the appeal.
- [<sup>F9</sup>(7) On such an appeal the Secretary of State may—
- (a) correct any defect, error or misdescription in the notice; or
  - (b) vary any of its requirements,
- if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
- [<sup>F9</sup>(8) Where the Secretary of State determines to allow the appeal, he may quash the notice.
- [<sup>F9</sup>(8A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.]
- (9) Schedule 6 applies to appeals under this section.
  - (10) Where any person has appealed to the Secretary of State under this section against a notice, neither that person nor any other shall be entitled, in any other proceedings

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instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

[<sup>F10</sup>(11) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings before the Secretary of State on an appeal under this section as if those proceedings were an inquiry held by the Secretary of State under section 250.]

#### Textual Amendments

- F2** S. 208(1)(aa) inserted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [s. 23\(2\)](#) (with [s. 84\(5\)](#)); [S.I. 1991/2905](#), [art.3](#) (subject to [art. 5](#))
- F3** S. 208(2) substituted (2.1.1992) for s. 208(2)(3) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [s. 23\(3\)](#) (with [s. 84\(5\)](#)); [S.I. 1991/2905](#), [art.3](#) (subject to [art. 5](#))
- F4** S. 208(4)-(4C) substituted (6.4.2009 for E. and otherwise prosp.) for s. 208(4) by [Planning Act 2008 \(c. 29\)](#), [ss. 197, 241](#), [Sch. 11 para. 4\(2\)](#) (with [s. 226](#)); [S.I. 2009/400](#), [art. 5](#)
- F5** S. 208(4)-(4C) substituted (6.4.2009 for E. and otherwise prosp.) for s. 208(4) by [Planning Act 2008 \(c. 29\)](#), [ss. 197, 241](#), [Sch. 11 para. 4\(2\)](#) (with [s. 226](#)); [S.I. 2009/400](#), [art. 5](#)
- F6** S. 208(4)-(4C) substituted (6.4.2009 for E. and otherwise prosp.) for s. 208(4) by [Planning Act 2008 \(c. 29\)](#), [ss. 197, 241](#), [Sch. 11 para. 4\(2\)](#) (with [s. 226](#)); [S.I. 2009/400](#), [art. 5](#)
- F7** S. 208(4)-(4C) substituted (6.4.2009 for E. and otherwise prosp.) for s. 208(4) by [Planning Act 2008 \(c. 29\)](#), [ss. 197, 241](#), [Sch. 11 para. 4\(2\)](#) (with [s. 226](#)); [S.I. 2009/400](#), [art. 5](#)
- F8** Words in s. 208(5) substituted (6.4.2009 for E. and otherwise prosp.) by [Planning Act 2008 \(c. 29\)](#), [ss. 197, 241](#), [Sch. 11 para. 4\(3\)](#) (with [s. 226](#)); [S.I. 2009/400](#), [art. 5](#)
- F9** S. 208(7)(8)(8A) substituted (2.1.1992) for s. 208(7)(8) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [s. 23\(4\)](#) (with [s. 84\(5\)](#)); [S.I. 1991/2905](#), [art.3](#) (subject to [art. 5](#))
- F10** S. 208(11) inserted (temp.) by virtue of [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), [s. 6](#), [Sch. 4 paras. 1, 5](#) (which temp. insertion falls (2.1.1992 and 6.4.2009) for specified purposes only by virtue of [S.I. 1991/2698](#), [art. 3](#) and [S.I. 2009/849](#), [art. 2](#) (with [art. 3](#)))

#### Modifications etc. (not altering text)

- C5** S. 208: power to apply conferred (10.11.1993) by [1993 c. 28](#), [s. 171\(4\)\(a\)](#); [S.I. 1993/2762](#), [art. 3](#)
- C6** S. 208: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), [reg. 2\(1\)](#), [Sch. 1](#)

## 209 Execution and cost of works required by s. 207 notice.

- (1) If, within the period specified in a notice under section 207(1) for compliance with it, or within such extended period as the local planning authority may allow, any trees which are required to be planted by a notice under that section have not been planted, the local planning authority may—
- (a) enter the land and plant those trees, and
  - (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.
- (2) Where such a notice has been served—
- (a) any expenses incurred by the owner of any land for the purpose of complying with the notice, and
  - (b) any sums paid by the owner of any land under subsection (1) in respect of expenses incurred by the local planning authority in planting trees required by such a notice to be planted,

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shall be deemed to be incurred or paid for the use and at the request of any person, other than the owner, responsible for the cutting down, destruction or removal of the original tree or trees.

- (3) Regulations made under this Act may provide that—
- (a) section 276 of the <sup>M1</sup>Public Health Act 1936 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);
  - (b) section 289 of that Act (power to require the occupier of any premises to permit works to be executed by the owner of the premises); or
  - (c) section 294 of that Act (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act),

shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a notice under section 207(1).

- (4) Regulations under subsection (3) applying section 289 of the Public Health Act 1936 may include adaptations and modifications for the purpose of giving the owner of land to which such a notice relates the right, as against all other persons interested in the land, to comply with the requirements of the notice.

- (5) Regulations under subsection (3) may also provide for the charging on the land of any expenses recoverable by a local authority [<sup>F11</sup>or National Park authority] under subsection (1).

- [<sup>F12</sup>(6) Any person who wilfully obstructs a person acting in the exercise of the power under subsection (1)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

#### Textual Amendments

- F11** Words in s. 209(5) inserted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 32(6)** (with ss. 7(6), 115, 117, **Sch. 8 para. 7**); S.I. 1995/2950, **art. 2(1)**
- F12** S. 209(6) substituted (2.1.1992) by **Planning and Compensation Act 1991 (c. 34, SIF 123:1)**, s. **23(5)**(with s. 84(5)); S.I. 1991/2905, **art. 3** (subject to **art. 5**)

#### Modifications etc. (not altering text)

- C7** S. 209: power to apply conferred (10.11.1993) by 1993 c. 28, s. **171(4)(a)**; S.I. 1993/2762, **art. 3**
- C8** S. 209: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, **reg. 2(1)**, **Sch. 1**
- C9** S. 209(1)(2)(6) applied (with modifications) (1.6.1997) by S.I. 1997/1160, **reg. 8(3)(4)**

#### Marginal Citations

- M1** 1936 c.49.

## 210 Penalties for non-compliance with tree preservation order.

- (1) If any person, in contravention of a tree preservation order—
- (a) cuts down, uproots or wilfully destroys a tree, or
  - (b) wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it,

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he shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable—

- [<sup>F13</sup>(a) on summary conviction to a fine not exceeding £20,000;] or
- (b) on conviction on indictment, to a fine.

(3) In determining the amount of any fine to be imposed on a person convicted <sup>F14</sup> . . . of an offence under subsection (1), 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.

(4) If any person contravenes the provisions of a tree preservation order otherwise than as mentioned in subsection (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

<sup>F15</sup>(5) . . . . .

**Textual Amendments**

**F13** S. 210(2)(a) substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [s. 23\(6\)\(a\)](#) (with [s. 84\(5\)](#)); [S.I. 1991/2905](#), [art.3](#) (subject to [art. 5](#))

**F14** Words in s. 210(3) repealed (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [ss. 23\(6\)\(b\), 84\(6\)](#), [Sch. 19 Pt I](#) (with [s. 84\(5\)](#)); [S.I. 1991/2905](#), [art.3](#), [Sch. 2](#) (subject to [art. 5](#))

**F15** S. 210(5) repealed (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [ss. 23\(6\)\(c\), 84\(6\)](#), [Sch. 19 Pt. I](#) (with [s. 84\(5\)](#)); [S.I. 1991/2905](#), [art.3](#), [Sch. 2](#) (subject to [art. 5](#))

**Modifications etc. (not altering text)**

**C10** S. 210: power to apply conferred (10.11.1993) by [1993 c. 28, s. 171\(4\)\(a\)](#); [S.I. 1993/2762](#), [art. 3](#)

**C11** S. 210: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), [reg. 2\(1\)](#), [Sch. 1](#)

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