



Town and Country Planning Act 1990

1990 CHAPTER 8

PART VIII

SPECIAL CONTROLS

CHAPTER I

TREES

General duty of planning authorities as respects trees

197 Planning permission to include appropriate provision for preservation and planting of trees

It shall be the duty of the local planning authority—

- (a) to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and
- (b) to make such orders under section 198 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.

Tree preservation orders

198 Power to make tree preservation orders

- (1) If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.
- (2) An order under subsection (1) is in this Act referred to as a “tree preservation order”.

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- (3) A tree preservation order may, in particular, make provision—
- (a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees except with the consent of the local planning authority, and for enabling that authority to give their consent subject to conditions;
 - (b) for securing the replanting, in such manner as may be prescribed by or under the order, of any part of a woodland area which is felled in the course of forestry operations permitted by or under the order;
 - (c) for applying, in relation to any consent under the order, and to applications for such consent, any of the provisions of this Act mentioned in subsection (4), subject to such adaptations and modifications as may be specified in the order.
- (4) The provisions referred to in subsection (3)(c) are—
- (a) the provisions of Part III relating to planning permission and to applications for planning permission, except sections 56, 62, 65 to 68, 69(3) and (4), 71, 80, 81, 91 to 96, 100 and 101 and Schedule 8; and
 - (b) sections 137 to 141, 143 and 144 (except so far as they relate to purchase notices served in consequence of such orders as are mentioned in section 137(1)(b) or (c));
 - (c) section 316.
- (5) A tree preservation order may be made so as to apply, in relation to trees to be planted pursuant to any such conditions as are mentioned in section 197(a), as from the time when those trees are planted.
- (6) Without prejudice to any other exemptions for which provision may be made by a tree preservation order, no such order shall apply—
- (a) to the cutting down, uprooting, topping or lopping of trees which are dying or dead or have become dangerous, or
 - (b) to the cutting down, uprooting, topping or lopping of any trees in compliance with any obligations imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance.
- (7) This section shall have effect subject to—
- (a) section 39(2) of the Housing and Planning Act 1986 (saving for effect of section 2(4) of the Opencast Coal Act 1958 on land affected by a tree preservation order despite its repeal); and
 - (b) section 15 of the Forestry Act 1967 (licences under that Act to fell trees comprised in a tree preservation order).

199 Form of and procedure applicable to orders

- (1) A tree preservation order shall not take effect until it is confirmed by the local planning authority and the local planning authority may confirm any such order either without modification or subject to such modifications as they consider expedient.
- (2) Provision may be made by regulations under this Act with respect—
- (a) to the form of tree preservation orders, and
 - (b) to the procedure to be followed in connection with the making and confirmation of such orders.

- (3) Without prejudice to the generality of subsection (2), the regulations may make provision—
- (a) that, before a tree preservation order is confirmed by the local planning authority, notice of the making of the order shall be given to the owners and occupiers of land affected by the order and to such other persons, if any, as may be specified in the regulations;
 - (b) that objections and representations with respect to the order, if duly made in accordance with the regulations, shall be considered before the order is confirmed by the local planning authority; and
 - (c) that copies of the order, when confirmed by the authority, shall be served on such persons as may be specified in the regulations.

200 Orders affecting land where Forestry Commissioners interested

- (1) In relation to land in which the Forestry Commissioners have an interest, a tree preservation order may be made only if—
- (a) there is not in force in respect of the land a plan of operations or other working plan approved by the Commissioners under a forestry dedication covenant; and
 - (b) the Commissioners consent to the making of the order.
- (2) For the purposes of subsection (1), the Forestry Commissioners are only to be regarded as having an interest in land if—
- (a) they have made a grant or loan under section 1 of the Forestry Act 1979 in respect of it, or
 - (b) there is a forestry dedication covenant in force in respect of it.
- (3) A tree preservation order in respect of such land shall not have effect so as to prohibit, or to require any consent for, the cutting down of a tree in accordance with a plan of operations or other working plan approved by the Forestry Commissioners, and for the time being in force, under a forestry dedication covenant or under the conditions of a grant or loan made under section 1 of the Forestry Act 1979.
- (4) In this section—
- (a) “a forestry dedication covenant” means a covenant entered into with the Commissioners under section 5 of the Forestry Act 1967; and
 - (b) references to provisions of the Forestry Act 1967 and the Forestry Act 1979 include references to any corresponding provisions replaced by those provisions or by earlier corresponding provisions.

201 Provisional tree preservation orders

- (1) If it appears to a local planning authority that a tree preservation order proposed to be made by that authority should take effect immediately without previous confirmation, they may include in the order as made by them a direction that this section shall apply to the order.
- (2) Notwithstanding section 199(1), an order which contains such a direction—
- (a) shall take effect provisionally on such date as may be specified in it, and
 - (b) shall continue in force by virtue of this section until—

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- (i) the expiration of a period of six months beginning with the date on which the order was made; or
 - (ii) the date on which the order is confirmed,
- whichever first occurs.

202 Power for Secretary of State to make tree preservation orders

- (1) If it appears to the Secretary of State, after consultation with the local planning authority, to be expedient that a tree preservation order or an order amending or revoking such an order should be made, he may himself make such an order.
- (2) Any order so made by the Secretary of State shall have the same effect as if it had been made by the local planning authority and confirmed by them under this Chapter.
- (3) The provisions of this Chapter and of any regulations made under it with respect to the procedure to be followed in connection with the making and confirmation of any order to which subsection (1) applies and the service of copies of it as confirmed shall have effect, subject to any necessary modifications—
 - (a) in relation to any proposal by the Secretary of State to make such an order,
 - (b) in relation to the making of it by the Secretary of State, and
 - (c) in relation to the service of copies of it as so made.

Compensation for loss or damage caused by orders, etc.

203 Compensation in respect of tree preservation orders

A tree preservation order may make provision for the payment by the local planning authority, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of loss or damage caused or incurred in consequence—

- (a) of the refusal of any consent required under the order, or
- (b) of the grant of any such consent subject to conditions.

204 Compensation in respect of requirement as to replanting of trees

- (1) This section applies where—
 - (a) in pursuance of provision made by a tree preservation order, a direction is given by the local planning authority or the Secretary of State for securing the replanting of all or any part of a woodland area which is felled in the course of forestry operations permitted by or under the order; and
 - (b) the Forestry Commissioners decide not to make any grant or loan under section 1 of the Forestry Act 1979 in respect of the replanting by reason that the direction 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.
- (2) Where this section applies, the local planning authority exercising functions under the tree preservation order shall be liable, on the making of a claim in accordance with this section, to pay compensation in respect of such loss or damage, if any, as is caused or incurred in consequence of compliance with the direction.

- (3) The Forestry Commissioners shall, at the request of the person under a duty to comply with such a direction as is mentioned in subsection (1)(a), give a certificate stating—
 - (a) whether they have decided not to make such a grant or loan as is mentioned in subsection (1)(b), and
 - (b) if so, the grounds for their decision.
- (4) A claim for compensation under this section must be served on the local planning authority—
 - (a) within 12 months from the date on which the direction was given, or
 - (b) where an appeal has been made to the Secretary of State against the decision of the local planning authority, within 12 months from the date of the decision of the Secretary of State on the appeal,but subject in either case to such extension of that period as the local planning authority may allow.

205 Determination of compensation claims

- (1) Except in so far as may be otherwise provided by any tree preservation order or any regulations made under this Act, any question of disputed compensation under section 203 or 204 shall be referred to and determined by the Lands Tribunal.
- (2) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

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.
- (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.

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.
- (3) Subject to section 208, a notice under this section shall take effect at the end of such period as may be specified in it.
- (4) The period so specified must not be less than 28 days after the service of the notice.
- (5) The duty imposed by section 206(1) may only be enforced as provided by this section and not otherwise.

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;
 - (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.
- (2) An appeal under subsection (1) may be made at any time within the period specified in the notice as the period at the end of which it is to take effect.
- (3) Such an appeal shall be made by notice in writing to the Secretary of State.
- (4) The notice shall indicate the grounds of the appeal and state the facts on which it is based.
- (5) On any such appeal 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.

- (7) On the determination of such an appeal the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the notice under section 207(1) or for varying its terms.
- (8) On such an appeal the Secretary of State may—
- (a) correct any informality, defect or error in the notice under section 207(1), or
 - (b) give directions varying the terms,
- if he is satisfied that the correction or, as the case may be, the variation can be made without injustice to the appellant or the local planning authority.
- (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 instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

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,
- 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 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

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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 under subsection (1).
- (6) Where by virtue of this section any expenses are recoverable by a local planning authority, those expenses shall be recoverable as a simple contract debt in any court of competent jurisdiction.

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,
 he shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) shall be liable—
 - (a) on summary conviction to a fine not exceeding the statutory maximum or twice the sum which appears to the court to be the value of the tree, whichever is the greater; or
 - (b) on conviction on indictment, to a fine.
- (3) In determining the amount of any fine to be imposed on a person convicted on indictment 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.
- (5) If, in the case of a continuing offence under this section, the contravention is continued after the conviction, the offender shall be guilty of a further offence and liable on summary conviction to an additional fine not exceeding £5 for each day on which the contravention is so continued.

Trees in conservation areas

211 Preservation of trees in conservation areas

- (1) Subject to the provisions of this section and section 212, any person who, in relation to a tree to which this section applies, does any act which might by virtue of section 198(3)(a) be prohibited by a tree preservation order shall be guilty of an offence.
- (2) Subject to section 212, this section applies to any tree in a conservation area in respect of which no tree preservation order is for the time being in force.
- (3) It shall be a defence for a person charged with an offence under subsection (1) to prove—

- (a) that he served notice of his intention to do the act in question (with sufficient particulars to identify the tree) on the local planning authority in whose area the tree is or was situated; and
 - (b) that he did the act in question—
 - (i) with the consent of the local planning authority in whose area the tree is or was situated, or
 - (ii) after the expiry of the period of six weeks from the date of the notice but before the expiry of the period of two years from that date.
- (4) Section 210 shall apply to an offence under this section as it applies to a contravention of a tree preservation order.

212 Power to disapply s. 211

- (1) The Secretary of State may by regulations direct that section 211 shall not apply in such cases as may be specified in the regulations.
- (2) Without prejudice to the generality of subsection (1), the regulations may be framed so as to exempt from the application of that section cases defined by reference to all or any of the following matters—
 - (a) acts of such descriptions or done in such circumstances or subject to such conditions as may be specified in the regulations;
 - (b) trees in such conservation areas as may be so specified;
 - (c) trees of a size or species so specified; or
 - (d) trees belonging to persons or bodies of a description so specified.
- (3) The regulations may, in relation to any matter by reference to which an exemption is conferred by them, make different provision for different circumstances.
- (4) Regulations under subsection (1) may in particular, but without prejudice to the generality of that subsection, exempt from the application of section 211 cases exempted from section 198 by subsection (6) of that section.

213 Enforcement of controls as respects trees in conservation areas

- (1) If any tree to which section 211 applies—
 - (a) is removed, uprooted or destroyed in contravention of that section; or
 - (b) is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of the provisions of such regulations under subsection (1) of section 212 as are mentioned in subsection (4) of that section,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) The duty imposed by subsection (1) on the owner of any land attaches to the person who is from time to time the owner of the land and may be enforced as provided by section 207 and not otherwise.

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214 Registers of s. 211 notices

It shall be the duty of a local planning authority to compile and keep available for public inspection free of charge at all reasonable hours and at a convenient place a register containing such particulars as the Secretary of State may determine of notices under section 211 affecting trees in their area.