STATUTORY RULES OF NORTHERN IRELAND

2015 No. 84

PLANNING

The Planning (Trees) Regulations (Northern Ireland) 2015

Made - - - - 26th February 2015

Coming into operation 1st April 2015

The Department of the Environment makes the following Regulations in exercise of the powers conferred on it by sections 122(4), 128 and 247(1) and (6) of the Planning Act (Northern Ireland) 2011 [F1].

F1 2011 c.25 (N.I.)

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Planning (Trees) Regulations (Northern Ireland) 2015 and shall come into operation on 1st April 2015.

(2) In these Regulations—

"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.

"electronic communication" has the meaning assigned to it by section 4 of the Electronic Communications Act (Northern Ireland) 2001 [F2];

"land affected by the order" includes 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;

"persons interested", in relation to land affected by an order, means the owners and occupiers of the land;

(3) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being carried out electronically—

(a) the expression "address" includes any number or address used for the purpose of such communications;

(b) references to notices, applications or other documents or to copies of such things include references to such documents or copies of them in electronic form.

(4) Paragraphs (5) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any form, map, notice or other document to any other person ("the recipient").

(5) The requirement shall be taken to be fulfilled where the form, map, notice or other document transmitted by means of electronic communication is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(6) In paragraph (5), "legible in all material respects" means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(7) Where the electronic communication is received by the recipient outside the recipient's business hours, it shall be taken to have been received on the next working day; and for this purpose "working day" means a day which is not a Saturday, Sunday or a public holiday.

(8) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (5).

(9) In these Regulations any references to sections are references to sections of the Planning Act (Northern Ireland) 2011 unless otherwise stated.

F2 2001 c.9 (N.I.) as amended by 2003 c.21 (N.I.)

PART 2

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;

(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 council 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 council 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 council;

(d) a copy of regulation 4; and

(e) where the order contains a direction under section 123 (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. Objections and representations—

(a) shall be made in writing and delivered so as to arrive with the council 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 council, 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 is 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 council 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 council 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 council 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 3

TREES IN CONSERVATION AREAS

Trees in conservation areas—exemptions

9.—(1) Section 127 (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 section 122(5) (tree preservation orders: councils) or in Schedule 3 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 (9)(b)(i) and (c) or paragraph (9)(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; and

(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.

Use of electronic communications

10.—(1) Paragraph (2) applies where a person uses electronic communications for any of the following purposes—

(a) making objections and representations under regulation 4;

(b) applying for consent to cut down, uproot, top or lop trees in accordance with Part 2 of Schedule 4;

(c) serving notice of appeal on the planning appeals commission against the refusal of consent or the granting of consent subject to conditions under Part 2 of Schedule 4 or serving notice of appeal in default of decision under that Schedule;

(d) serving a claim for compensation on the council under Part 2 of Schedule 4.

(2) In the case to which this paragraph applies, and except where a contrary intention appears, the person making the objection and representation, application, appeal or claim shall be taken to have agreed—

(a) to the use of electronic communications for all purposes relating to the objection and representation, application, appeal or claim (as the case may be) which are capable of being effected using such communications;

(b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the objection and representation, application or claim;

(c) that the person's deemed agreement under this paragraph shall subsist until he gives notice in writing that he wishes to revoke the agreement and such withdrawal or revocation shall be final and shall take effect on a date specified by him in the notice but not less than seven days after the date on which the notice is given.

(3) In this regulation "Schedule 4" means Schedule 4 of the Schedule (form of tree preservation order).

PART 4

REVOCATION AND TRANSITIONAL PROVISIONS

Revocation and transitional provisions

11.—(1) The Planning (Trees) Regulations (Northern Ireland) 2003 [F3] are revoked.

(2) Where before the commencement of these Regulations the Department made or confirmed any order, that order shall be treated as having been made or confirmed by the appropriate council.

(3) Anything which before the commencement of the Regulations was in the process of being done by, to or in relation to the Department in connection with any of the functions mentioned in paragraph (4) shall be treated as having been done by, to or in relation to the appropriate council.

(4) The functions mentioned in this paragraph are—

(a) the making and confirmation of an order;

(b) the revocation of an order;

(c) the determination of an application for any consent required under an order and any appeal against that decision to the planning appeals commission; and

(d) the making of any claims for compensation under any order.

(5) Section 59 (matters which may be raised in an appeal under section 58) as modified by the Schedule does not apply to an appeal made to the planning appeals commission before the commencement of these Regulations which is not determined at that date.

(6) In this regulation "appropriate council" means the council in whose district the land on which the trees, groups of trees or woodlands to which the order relates is situated.