STATUTORY INSTRUMENTS

# 1975 No. 1204 (S. 183)

# TOWN AND COUNTRY PLANNING, SCOTLAND

## The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975

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| *Made - - -* | *17th July* 1975 |
| *Laid before Parliament* | *4th August* 1975 |
| *Coming into Operation* | *1st September* 1975 |

In exercise of the powers conferred on me by sections 58, 59, 59A and 273 of the Town and Country Planning (Scotland) Act 1972(a), as amended by the Town and Country Amenities Act 1974(b), and of all other powers enabling me in that behalf, I hereby make the following regulations:—

*Citation and commencement*

**1.** These regulations may be cited as the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975, and shall come into operation on 1st September 1975.

*Interpretation*

**2.**—(1) In these regulations unless the context otherwise requires—

"the Act" means the Town and Country Planning (Scotland) Act 1972;

"the Conservator of Forests" means in relation to an order the Forestry Commissioners' Conservator of Forests for the conservancy in which the trees included in the order are situated;

"Keeper of the Registers of Scotland" means in relation to an order the officer of the Registers of Scotland for the time being appointed to be Keeper of the Registers of Scotland;

"order" means a tree preservation order made under section 58 of the Act and includes an order amending or revoking such an order;

"notice by advertisement" in relation to an order means a notice published in a newspaper circulating in the locality in which the trees included in the order are situated.

(2) The Interpretation Act 1889(c) shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

(a) 1972 c. 52. (b) 1974 c. 32. (c) 1889 c. 63.

*Revocation and Savings*

**3.** The Town and Country Planning (Tree Preservation Order) (Scotland) Regulations 1948(**a**) and the Town and Country Planning (Tree Preservation Order) (Scotland) Amendment Regulations 1968(**b**) are hereby revoked, but without predjudice to any order made thereunder and in relation to any such order in so far as these regulations contain a corresponding provision compliance with any requirement of those regulations shall be deemed to be compliance with the corresponding requirement of these regulations and so far as the requirements of those regulations have not been complied with the order may be dealt with as if it had been made under these regulations.

*Form and contents of order*

**4.**—(1) An order shall be in the form (or substantially in the form) set out in the Schedule hereto.

(2) The order shall define the position of the trees, groups of trees, or woodlands to which it relates, and for that purpose shall include a map.

*Procedure*

**5.** A planning authority shall, as soon as may be after making an order—

(*a*) place on deposit for inspection at a place or places convenient to the locality in which the trees, or groups of trees, or woodlands are situated a certified copy or copies of the order and of the map;

(*b*) give notice by advertisement of the making of the order and include in the notice a statement containing the information specified in paragraph (*d*) of this regulation;

(*c*) send a copy of the order and the map to the Conservator of Forests and the Keeper of the Registers of Scotland together with a list of all the persons served under (*d*) of this regulation;

(*d*) serve on the owners, lessees and occupiers of the land affected by the order, and on any other person then known to them to be entitled to work by surface working any minerals in that land or to fell any of the trees affected by the order, a copy of the order and the map together with a notice stating—

(*i*) the grounds for making the order;

(*ii*) the address or addresses of the place or places where a certified copy or copies of the order and map have been deposited for inspection, and the hours during which they may be inspected;

(*iii*) that objections and representations with respect to the order may be made to the Secretary of State in accordance with regulation 7 hereof, a copy of which regulation shall be included in or appended to the notice;

(**a**) S.I. 1948/1781 (Rev. XXII, p. 895: 1948 I, p. 4346). (**b**) S.I. 1968/435 (1968 I, p. 1143).

(*iv*) that if no objections or representations are duly made or any so made are withdrawn, then not less than forty-two days from the date of the service of the notice(s) of the making of the order, the order may be confirmed (but without any modification) as an unopposed order by the planning authority who made it instead of being confirmed by the Secretary of State;

(*v*) where the order contains a direction under section 59 of the Act, the effect of the direction.

*Confirmation by the planning authority*

**6.**—(1) If no objections or representations with respect to an order are duly made in accordance with regulation 7 hereof, or if any so made are withdrawn, then not less than forty-two days from the date of the service of the notice(s) of the making of the order in accordance with the provisions of regulation 5(*d*) hereof the order may be confirmed (but without any modification) as an unopposed order by the planning authority who made it instead of being confirmed by the Secretary of State.

(2) The planning authority shall as soon as may be after confirming an order inform the owners, lessees and occupiers of the land to which the order relates, the Conservator of Forests, the Keeper of the Registers of Scotland, and any other person on whom notice has been served in accordance with the provisions of regulation 5(*d*) hereof of the confirmation of the order and of the date of such confirmation.

*Objections and representations*

**7.**—(1) Every objection or representation to the Secretary of State with respect to an order shall be made in writing, shall state the grounds thereof, the name of the planning authority who made the order, and specify the particular trees, groups of trees, or woodlands in respect of which it is made, and shall be sent to the Scottish Development Department, New St Andrew's House, St James Centre, Edinburgh EH1 3SZ.

(2) An objection or representation shall be duly made if it complies with paragraph (1) of this regulation and is received by the Secretary of State within 28 days from the date of the service of the notice of the making of the order or the date of the publication of the notice by advertisement as the case may be.

*Consideration by the Secretary of State*

**8.**—(1) On receiving any objections or representations to an order, the Secretary of State may by a direction in writing require the planning authority to submit to him—

(*i*) the order and the map and a duplicate of each, except that where an order only amends or revokes an existing order which was confirmed by the Secretary of State the order and the map alone shall suffice, and if the map referred to in the said amending or revoking order is the map included or referred to in the existing order no copy of that map need be sent;

(ii) where the order only amends or revokes an existing order which was confirmed by the planning authority, one copy of the existing order and map;

(iii) a copy of the notice by advertisement given under regulation 5(*b*);

(*iv*) a copy of the statement served under regulation 5(*d*)(*i*); and

(*v*) a certificate signed by a duly authorised officer of the planning authority that regulations 4 and 5 (making of the order and service of the notices) have been complied with.

(2) The Secretary of State shall, before deciding whether to confirm the order, take into consideration any objections and representations duly made in accordance with regulation 7 hereof, and if he has caused a local inquiry to be held with respect to such objections or representations the report of that inquiry.

*Action on receipt of the Secretary of State's decision*

**9.** The planning authority shall, as soon as may be after receipt of the Secretary of State's decision on the order—

(*a*) inform the Conservator of Forests, the Keeper of the Registers of Scotland, and the persons on whom notice has been served in accordance with the provisions of regulation 5(*d*) hereof, of the Secretary of State's decision. In addition, where the order has been confirmed subject to modifications, the authority shall serve on every such person a copy of the order and the map as confirmed by the Secretary of State, and in any case where the order contains a direction under section 59 of the Act and the Secretary of State within the period of 6 months beginning with the date on which the order was made, notifies the planning authority that he does not propose to confirm it, the planning authority shall, as soon as may be, serve copies of that notice on the Conservator of Forests, the Keeper of the Registers of Scotland, and the persons on whom notice has been served in accordance with the provisions of regulation 5(*d*) hereof;

(*b*) give notice by advertisement of the Secretary of State's decision, and where the order is confirmed with or without modifications, state in such notice the place or places where and the hours within which a certified copy of the order and the map may be inspected.

**10.** As soon as may be after an order is confirmed, whether by the planning authority or by the Secretary of State, it shall be recorded in the appropriate Register of Sasines by the planning authority.

*Trees In Conservation Areas*

**11.** Section 59A of the Town and Country Planning (Scotland) Act 1972 (prohibition against cutting down, topping, etc. of trees in conservation areas) shall not apply where the act is—

(*i*) the cutting down of a tree in the circumstances mentioned in paragraph (1) or (2), or the uprooting, felling or lopping of a tree in the circumstances mentioned in paragraph (3) or (4) of the Second Schedule to the Schedule to these Regulations (Form of Tree Preservation Order);

(*ii*) the cutting down of a tree in accordance with a felling licence granted by the Forestry Commissioners;

(*iii*) the uprooting, felling or lopping of a tree on land in the occupation of a planning authority when this is done by or with the consent of that authority;

(*iv*) the uprooting, felling or lopping of a tree having a diameter not exceeding 75 millimetres, or the uprooting or felling in a woodland of a tree having a diameter not exceeding 100 millimetres where this is done to improve the growth of other trees, the reference to "diameter" herein being construed as a reference to the diameter measured over the bark, at a point 1·5 metres (5 feet) above the ground level.

*William Ross,*

One of Her Majesty's Principal Secretaries of State.

New St Andrew's House,
Edinburgh.
17th July 1975.

Regulation 4

# SCHEDULE

*Form of Tree Preservation Order*

*Town and Country Planning (Scotland) Acts* 1972 *to* 1974

The[1] Tree Preservation Order No.

The Council[2], in this Order referred to as "the planning authority", in exercise of the powers conferred on them by section[s] 58[and 59][3] of the Town and Country Planning (Scotland) Act 1972 (hereinafter referred to as "the Act") and of all other powers enabling them in that behalf and subject to the provisions of the Forestry Act 1967(a), hereby make the following Order:—

1. Insert title of order.
2. Insert name of planning authority
3. Include only where order contains a direction under section 59 of the Act.

*Citation, Commencement and Interpretation*

**1.**—(1) This Order may be cited as the Tree Preservation Order No. [19–] and shall come into effect [on the date on which it is confirmed by the planning authority under section 58(5)(c)] [the Secretary of State under section 58(4)]] on the date specified in Article 15 to this Order][3].

(2) The Interpretation Act 1889(b) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

*Prohibition against felling, etc. without consent*

**2.** Subject to the provisions of this Order and the exemptions specified in the Second Schedule hereto, no person shall, except with the consent of the planning authority, cut down, top, lop, uproot, wilfully damage or wilfully destroy or cause or permit the cutting down, topping, lopping, uprooting, or wilful damage or wilful destruction of any tree specified in the First Schedule hereto or comprised in a group of trees or in a woodland specified therein, the position of which trees, groups of trees [and] [or] woodlands to which this Order relates is defined in the manner indicated in the said First Schedule on the map[4] annexed and signed as relative hereto, which map shall for the purpose of such definition as aforesaid, prevail where any ambiguity arises between it and the specification in the said First Schedule.

4. Map to be on a scale of not less than 25 ins. to one mile except in the case of large woodlands when the scale shall be 6 ins. to one mile.

*Application for consent*

**3.** An application for consent made to the planning authority under Article 2 of this Order shall be in writing and shall specify—

(*i*) the [tree or] trees to which the application relates;

(*ii*) the reasons for making the application;

(*iii*) the operations for the carrying out of which consent is required;

and shall where necessary for the identification of such [tree or] trees be accompanied by a map or plan of a size or on a scale sufficient for the purpose.

**4.** If it is desired to fell any of the trees included in this Order, whether included as trees, groups of trees or woodlands, and the trees are trees for the felling of which a licence is required under the Forestry Act 1967, application should be made—*not* to the planning authority for consent under this Order but to the Conservator of Forests for a licence under Section 15(5) of that Act.

**5.**—(1) Where an application for consent is made to the planning authority under this Order the planning authority may grant such consent either unconditionally, or subject to such conditions (including conditions requiring the replacement of any tree by one or more trees on the site or in the immediate vicinity thereof) as the planning authority may think fit, or may refuse consent:

Provided that where the application relates to any woodland specified in the First Schedule to this Order the planning authority shall grant consent so far as it accords with the principles of good forestry, except where, in the opinion of the planning authority, it is necessary in the interests of amenity to maintain the special character of the woodland or the woodland character of the area and shall not impose conditions on such consent requiring replacement or replanting.

(2) The authority shall keep a register of all applications for consent under this Order containing information as to the nature of such applications, the decisions of the planning authority thereon, any compensation awarded in consequence of such decisions and any directions as to replanting of woodlands; and every such register shall be available for inspection by the public at all reasonable hours.

(a) 1967 c. 10. (b) 1889 c. 63

**6.** Where the planning authority refuse consent under this Order or grant such consent subject to conditions they may when refusing or granting consent certify in respect of any trees for which they are so refusing or granting consent that they are satisfied:

(*a*) that the refusal or condition is in the interests of good forestry; or

(*b*) in the case of trees other than trees comprised in woodlands, that the trees have an outstanding or special amenity value.

**7.**—(1) Where consent is granted under this Order to fell any part of a woodland other than consent for silvicultural thinning then unless—

(*a*) such consent is granted for the purpose of enabling development to be carried out in accordance with permission to develop land under Part III of the Act, or

(*b*) the planning authority, with the approval of the Secretary of State, dispense with replanting,

the authority shall give to the owner of the land on which that part of the woodland is situated a direction in writing specifying the manner in which and the time within which he shall replant such land and where a direction is given and the part is felled the owner shall, subject to the provisions of this Order and Section 164 of the Act, replant the said land in accordance with the direction.

(2) Any direction given under paragraph (1) of this Article may include requirements as to—

(*a*) species;

(*b*) number of trees per acre;

(*c*) the erection and maintenance of fencing necessary for the protection of the replanting;

(*d*) the preparation of ground, draining, removal of brushwood, lop and top; and

(*e*) protective measures against fire.

(3) If any question arises between the planning authority and the said owner of the land as to whether any such direction is reasonable having regard to the particular circumstances of the case or to any other material considerations, the question shall, on the application of either party, be determined by the Secretary of State, whose decision shall be final.

*Adaptation and modification of Act*

**8.** The provisions set out in the Third Schedule to this Order, being provisions of the Act adapted and modified for the purposes of this Order, shall apply in relation hereto.

*Compensation*

**9.** Subject to the provisions of this Order, any person who has suffered loss or damage in consequence of any refusal (including revocation or modification) of consent under this Order or of any grant of any such consent subject to conditions, shall, if he makes a claim on the planning authority within the time and in the manner prescribed by this Order, be entitled to recover from the planning authority compensation in respect of such loss or damage.

Provided that no compensation shall be payable in respect of loss or damage suffered by reason of such refusal or grant of consent in the case of any [tree or] trees the subject of a certificate in accordance with Article 6 of this Order.

**10.** In assessing compensation payable under the last preceding paragraph account shall be taken of:

(*a*) any compensation or contribution which has been paid whether to the claimant or any other person in respect of the same trees or woodland areas under the terms of this or any other Tree Preservation Order under Section 58 of the Act, or under the terms of any Interim Preservation Order made under Section 8 of the Town and Country Planning (Interim Development) (Scotland) Act 1943(**a**) or any compensation which has been paid or which could have been claimed under any provision relating to the preservation of trees or protection of woodland contained in an operative scheme under the Town and Country Planning (Scotland) Act 1932(**b**), and

(*b*) any injurious affection to any land of the owner which would result from the felling of the trees or woodlands the subject of the claim.

(**a**) 1943 c. 43. (**b**) 1932 c. 49.

**11.**—(1) A claim for compensation under this Order shall be made by serving on the lanning authority a notice in writing stating the grounds of the claim and the amount laimed.

(2) The time within which any such claim shall be made as aforesaid shall be a period of ix months from the date of the decision of the planning authority or of the Secretary of State, s the case may be, or where an appeal has been made to the Secretary of State against he decision of the planning authority, from the date of the decision of the Secretary of State n the appeal.

**12.** Any question of disputed compensation shall be determined in accordance with the rovisions of Section 168 of the Act.

*)ffences and penalties, etc.*

**13.** Under the provisions of Section 98 of the Act any person who in contravention of this )rder cuts down, uproots or wilfully destroys a tree, or wilfully damages, tops or lops a ree in such a manner as to be likely to destroy it, shall be guilty of an offence and liable on ummary conviction to a fine not exceeding £400 or twice the sum which appears to the ourt to be the value of the tree, whichever is the greater, or on conviction on indictment o a fine. Other contraventions of this Order carry with them on summary conviction a fine ot exceeding £200. If in the case of a continuing offence the contravention is continued after onviction, the offender shall be guilty of a further offence and liable on summary conviction o an additional fine not exceeding £5 for each day on which the contravention is so continued.

**14.**—(1) If a tree other than one which is part of a woodland is removed, uprooted or lestroyed in contravention of this Order, or is removed, uprooted or destroyed or dies at a ime when its felling is authorised only by virtue of the provisions of Section 58(6) of the \ct relating to uprooting or felling where urgently necessary in the interests of safety, it shall e the duty of the owner of the land, unless on his application the planning authority lispense with this requirement, to plant another tree of appropriate size and species at the ame place as soon as he reasonably can.

(2) In relation to any tree planted pursuant to paragraph (1) above this Order shall pply as it applied to the original tree.

(3) If it appears to the planning authority that the provision in paragraph (1) above has ot been complied with in the case of any tree or trees, they may, at any time within two ears from the date on which failure to comply with this provision came to their knowledge, erve on the owner of the land a notice requiring him, within such period as may be specified n the notice, to plant a tree or trees of such size and species as may be so specified, and the rovisions of section 99 of the Act shall apply in any such case.

*Provisional Tree Preservation Orders*

**15.** The provisions of Section 59(2) of the Act (which makes provision for a tree preservation order to take effect immediately without previous confirmation by the planning authority r the Secretary of State) shall apply to this Order and the Order shall take effect on ][5].

5. This provision is only to be included if it appears to the planning authority that the Order should take effect immediately.

*Application of Order to Future Planting*

**16.** This Order shall apply to any tree specified in the First Schedule hereto, which is to e planted in pursuance of a condition of the grant of planning permission as from the ime when that tree is planted][6].

6. This provision may be included in relation to trees planted pursuant to a condition imposed under Section 57 of the Act.

_____[7]

7. Authenticate in the manner appropriate to the authority making the Order giving date and place of making.

Article 2.

## FIRST SCHEDULE

Trees Specified Individually[1]
(coloured green on the map)

| No. on Map | Description | Situation[2] |
|---|---|---|
| [T1] | [Oak] | |
| [T2] | [Ash] | |

Trees Specified by References to an Area[1]
(within a continuous black line on the map)

| No. on Map | Description | Situation[2] |
|---|---|---|
| [A1] | [The several trees of whatever species standing in the area numbered A1 on the map] | |
| [A2] | [The several pine, sycamore and larch trees standing in the area numbered A2 on the map] | |

Groups of Trees[1]
(within a broken black line on the map)

| No. on Map | Description | Situation[2] |
|---|---|---|
| [G1] | [Group consisting of 3 pine, 2 ash and 3 elm] | |
| [G2] | [Group consisting of 10 sycamore] | |

Woodlands[1]
(within a continuous red line on the map)

| No. on Map | Description | Situation[2] |
|---|---|---|
| [W1] | [Mixed hardwoods consisting mainly of ] | |
| [W2] | [Mixed conifers and deciduous trees consisting mainly of ] | |

_____[3]

1. Every heading should be included in the Schedule, and the word "NONE" written in where necessary. The entries above are shown as examples in each category.

2. The description entered under the column headed "Situation" should be a description suitable for recording in the Register of Sasines.

3. Authenticate in the manner appropriate to the authority making the order.

Article 2

## SECOND SCHEDULE

This Order shall not apply so as to require the consent of the planning authority to—

(1) the cutting down of any tree on land which is subject to a forestry dedication agreement where—

(*a*) any positive agreements on the part of the owner of the land contained in the same deed as the forestry dedication agreement and at the time of the cutting down binding on the then owner of the land are fulfilled;

(*b*) the cutting down is in accordance with a plan of operations approved by the Forestry Commission under such deed.

(2) the cutting down of any tree which is in accordance with a plan of operations approved by the Forestry Commission under the approved woodlands scheme or other grant scheme under section 4 of the Forestry Act 1967.

*(3) the uprooting, felling or lopping of any tree if such uprooting, felling or lopping is urgently necessary in the interests of safety, or is necessary for the prevention or abatement of a nuisance, so long as notice in writing of the proposed operations is given to the planning authority as soon as may be after the necessity for the operation arises, or if such uprooting, felling or lopping is carried out in compliance with any obligation imposed by or under any Act of Parliament. *(NOTE: Section 60(1) of the Act requires, unless on the application of the owner the planning authority dispense with the requirement, that any tree removed or destroyed under Section 58(6) of the Act shall be replaced by another tree of appropriate size and species. In order to enable the planning authority to decide whether or not to dispense with the requirement, notice of the proposed action should be given to the planning authority which except in the case of emergency should be of not less than 5 days.)

(4) the uprooting, felling or lopping of a tree—

(*a*) in pursuance of the powers conferred on the Post Office by virtue of Section 5 of the Telegraph (Construction) Act 1908(a) and Section 21 of the Post Office Act 1969(b), or by or at the request of the Post Office where the land on which the tree is situated is operational land as defined by the Post Office Operational Land Regulations 1973(c) and either works on such land cannot otherwise be carried out or the uprooting, felling or lopping is for the purpose of securing safety in the operation of the undertaking;

(*b*) by or at the request of

(*i*) a statutory undertaker where the land on which the tree is situated is operational land as defined by the Act and either works on such land cannot otherwise be carried out or the uprooting, felling or lopping is for the purpose of securing safety in the operation of the undertaking;

(*ii*) an electricity board within the meaning of the Electricity Act 1947(d) where such a tree obstructs the construction by the board of any main transmission line or other electric line within the meaning respectively of the Electricity (Supply) Act 1919(e) and the Electric Lighting Act 1882(f), or interferes or would interfere with the maintenance or working of any such line;

(*iii*) the Secretary of State for Defence, the Secretary of State for Trade or the Civil Aviation Authority where in the opinion of such Secretary of State or Authority the tree obstructs the approach of aircraft to, or their departure from, any aerodrome or hinders the safe and efficient use of aviation or defence technical installations;

(*c*) where immediately required for the purpose of carrying out development authorised by a planning permission granted on an application made under Part III of the Act, or deemed to have been granted for any of the purposes of that part.

_____[1]

1. Authenticate in the manner appropriate to the authority making the Order.

(a) 1908 c. 33.
(b) 1969 c. 48.
(c) S.I. 1973/310 (1973 I, p. 1079).
(d) 1947 c. 54.
(e) 1919 c. 100.
(f) 1882 c. 56.

Article 8.

## THIRD SCHEDULE

Provisions of the Act as adapted and modified to apply to this Order—

Provisions as to effect of consent under the Order.

**30.**—(1) Without prejudice to the following provisions as to the revocation or modification of consents, any consent under the Order, including any direction as to replanting given by the planning authority on the granting of such consent, shall (except in so far as the consent otherwise provides), enure for the benefit of the land and of all persons for the time-being interested therein.

Reference of applications to the Secretary of State.

**32.**—(1) The Secretary of State may give directions to the planning authority requiring applications for consent under the Order to be referred to him instead of being dealt with by the planning authority.

**32.**—(2)(b) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.

**32.**—(3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.

**32.**—(4) Where an application for consent under the Order is referred to the Secretary of State under this section, the provisions of Articles 5 and 6 of the Order shall apply as they apply to an application for such consent which falls to be determined by the planning authority.

**32.**—(5) Before determining an application referred to him under this section the Secretary of State shall, if either the applicant or the planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

**32.**—(6) The decision of the Secretary of State on any application referred to him under this section shall be final.

Appeals against refusal of consent or conditional consent.

**33.**—(1) Where an application is made to the planning authority for consent under the Order and that consent is refused by that planning authority, or is granted by them subject to conditions or where any certificate or direction is given by the planning authority, the applicant if he is aggrieved by their decision, or by any such certificate or direction may by notice under this section appeal to the Secretary of State.

**33.**—(2) Any notice under this section shall be served in writing within twenty-eight days from the receipt of notification of the decision, certificate or direction, as the case may be, or such longer period as the Secretary of State may allow.

**33.**—(3) Where an appeal is brought under this section from a decision, certificate or direction of the planning authority, the Secretary of State, subject to the following provisions of this section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the planning authority, whether the appeal relates to that part thereof or not or may cancel any certificate or cancel or vary any direction and may deal with the application as if it had been made to him in the first instance.

Provided that where the Secretary of State proposes to reverse or vary any part of the decision of the planning authority to which the appeal does not relate, he shall give notice of his intention to the planning authority and to the applicant and shall afford to them an opportunity to make representations thereto.

**33.**—(4) Before determining an appeal under this section, the Secretary of State shall, if either the applicant or the planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

**33.**—(6) The decision of the Secretary of State on any appeal under this section shall be final.

Appeal in default of decision on application for consent.

**34.** Where an application for consent under the Order is made to the planning authority, then unless within two months from the date of the application, or within such extended period as may at any time be agreed upon in writing between the applicant and the planning authority, the planning authority either—

(*a*) give notice to the applicant of their decision on the application; or

(*b*) give notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 32 above;

the provisions of the last foregoing section shall apply in relation to the application as if the consent to which it relates had been refused by the planning authority, and as if notification of their decision had been received by the applicant at the end of the said period of two months, or at the end of the said extended period, as the case may be.

Power to revoke or modify consent under the Order.

**42.**—(1) If it appears to the planning authority, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify any consent granted on an application made under Article 3 of the Order, they may (by order) subject to the following provisions of this section revoke or modify the consent to such extent as (having regard to those matters) they consider expedient.

**42.**—(2) Except as provided in section 43 of the Act, an order under this section shall not take effect unless it is confirmed by the Secretary of State; and the Secretary of State may confirm any such order submitted to him either without modification or subject to such modifications as he considers expedient.

**42.**—(3) Where the planning authority submit an order to the Secretary of State for his confirmation under this section they shall furnish the Secretary of State with a statement of their reason for making the order and shall serve notice, together with a copy of the aforesaid statement on the owners, lessees and occupiers of the land affected and on any other person who in their opinion will be affected by the order; and if within such period as may be specified in that notice (being not less than twenty-eight days from the service thereof) any person on whom the notice is served so requires the Secretary of State, before confirming the order, shall afford to that person and to the planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

**42.**—(4) The power conferred by this section to revoke or modify consent may be exercised at any time before the operations for which consent has been given have been completed:

Provided that revocation or modification of consent shall not affect so much of these operations as has been carried out before the date on which the order was confirmed as aforesaid.

Unopposed revocation or modification of consent.

**43.**—(1) The following provisions shall have effect when the planning authority have made an order under section 42 above revoking or modifying any consent granted on an application made under a Tree Preservation Order but have not submitted the order to the Secretary of State for confirmation by him, and—

(*a*) the owner, lessee and occupier of the land and all persons who in the planning authority's opinion will be affected by the order have notified the authority in writing that they do not object to the order; and

(*b*) it appears to the planning authority that no claim for compensation is likely to arise under section 153 of the Act on account of the order.

**43.**—(2) The planning authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement shall specify—

(*a*) the period (being not less than twenty-eight days from the date on which the advertisement first appears) within which persons affected by the order may give notice to the Secretary of State that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose; and

(*b*) the period (not being less than fourteen days from the expiration of the period referred to in paragraph (*a*) of this subsection) at the expiration of which, if no such notice is given to the Secretary of State, the order may take effect by virtue of this section and without being confirmed by the Secretary of State.

**43.**—(3) The planning authority shall also serve notice to the same effect on the persons mentioned in subsection (1)(*a*) above, and the notice shall include a statement to the effect that no compensation is payable under section 153 of the Act in respect of an order under section 42 of the Act which takes effect by virtue of this section and without being confirmed by the Secretary of State.

**43.**—(4) The planning authority shall send a copy of any advertisement published under subsection (2) above to the Secretary of State not more than three days after the publication.

**43.**—(5) If within the period referred to in subsection (2)(*a*) above no person claiming to be affected by the order has given notice to the Secretary of State as aforesaid, and the Secretary of State has not directed that the order be submitted to him for confirmation, the order shall, at the expiration of the period referred to in subsection (2)(*b*) above, take effect by virtue of this section and without being confirmed by the Secretary of State as required by section 42(2) above.

**43.**—(6) This section does not apply to an order revoking or modifying a consent granted or deemed to have been granted by the Secretary of State under Parts III, IV or V of the Act.

Compensation where consent revoked or modified.

**153**—(1) Where consent is revoked or modified by an order under section 42 above then if, on a claim made to the planning authority in writing within the period of six months from the date of the confirmation of the order by the Secretary of State, it is shown that any person interested in the land—

(*a*) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or

(*b*) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the planning authority shall pay to that person compensation in respect of that expenditure, loss or damage.

**153.**—(2) For the purposes of this section any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out that work.

**153.**—(3) Subject to subsection (2) of this section, no compensation shall be paid under this section in respect of any work carried out before the grant of the consent which is revoked or modified, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.

1. Authenticate in the manner appropriate to the authority making the Order.

———————————[1]

## EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These Regulations supersede the Town and Country Planning (Tree Preservation Order) (Scotland) Regulations 1948, as amended. The principal changes are the making of provision for the confirmation by Planning Authorities of unopposed Orders, the prescribing of exemptions from the general prohibition against the felling etc. of trees in conservation areas introduced by section 9 of the Town and Country Amenities Act 1974, and the prescribing for the first time of the Form of Tree Preservation Order to be used by planning authorities.

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