



Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997)

1972 CHAPTER 52

PART IV

ADDITIONAL CONTROL IN SPECIAL CASES

Trees

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

It shall be the duty of the . . . ^{F1} 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 58 of this Act 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.

Textual Amendments

F1 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)

58 Tree preservation orders.

- (1) If it appears to a . . . ^{F2} planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their district, they may for that purpose make an order (in this Act referred to as a “tree preservation order”) with respect to such trees, groups of trees or woodlands as may be specified in the order; and, in particular, provision may be made by any such order—

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- (a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping; [^{F3}uprooting, wilful damage] or wilful destruction of trees except with the consent of the . . . ^{F2} 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 falling within subsection (2) of this section, subject to such adaptations and modifications as may be specified in the order.
- (2) References in this Act to provisions thereof falling within this subsection are references to—
- (a) the provisions of Part III of this Act relating to planning permission and to applications for planning permission, except sections 22, 23, 24, 25, 26(2) to (6), 31(3), 35, 36, 38 to 41 and 44 to 47 of this Act; and
 - (b) such of the provisions of Part IX of this Act as are therein stated to be provisions falling within this subsection;
 - (c) section 256 of this Act.
- (3) 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 57(a) of this Act, as from the time when those trees are planted.
- (4) [^{F4}Subject to section 59 of this Act [^{F5}and section 2 of the Town and Country Planning Act 1984 (tree preservation orders in anticipation of disposal of Crown land)], a tree preservation order shall not take effect until it is confirmed by the planning authority; and the planning authority may confirm any such order either without modification or subject to such modification as they consider expedient]. As soon as may be after a tree preservation order is so confirmed, it shall be recorded in the appropriate Register of Sasines by the . . . ^{F2} planning authority.
- (5) Provision may be made by regulations under this Act with respect to the form of tree preservation orders, and the procedure to be followed in connection with the submission and confirmation of such orders; and the regulations may (without prejudice to the generality of this subsection) make provision as follows—
- (a) that, before a tree preservation order is [^{F6}confirmed by the planning authority], notice of the making of the order shall be given to the owners, lessees 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 [^{F6}planning authority];
 - (c) . . . ^{F7}
 - (d) that copies of the order, when confirmed by . . . ^{F8}the authority, shall be served on such persons as may be specified in the regulations.
- (6) Without prejudice to any other exemptions for which provision may be made by a tree preservation order, nothing in a tree preservation order shall prohibit the [^{F9}uprooting,] felling or lopping of any tree if such [^{F9}uprooting,] felling or lopping is urgently necessary in the interests of safety, or is necessary for the prevention or abatement of

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a nuisance, so long as notice in writing of the proposed operations is given to the . . . ^{F2} planning authority as soon as may be after the necessity for the operations arises, or if such [^{F9}uprooting,] felling or lopping is carried out in compliance with any obligation imposed by or under any Act of Parliament.

(7) In relation to land in respect of which the Forestry Commissioners have made advances under section 4 of the ^{M1}Forestry Act 1967 or in respect of which there is in force a forestry dedication agreement entered into with the Commissioners under section 5 of that Act, 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 such an agreement; and
- (b) the Commissioners consent to the making of the order.

(8) Where a tree preservation order is made in respect of land to which subsection (7) of this section applies, the order 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 such an agreement as is mentioned in that subsection or under a woodlands scheme made under the powers contained in the said Act of 1967.

(9) In the preceding provisions of this section references to provisions of the ^{M2}Forestry Act 1967 include references to the corresponding provisions (replaced by that Act) in the Forestry Acts 1919 to 1951.

(10) The preceding provisions of this section shall have effect subject to the provisions—

- (a) ^{F10}
- (b) of section 15 of the Forestry Act 1967 (licences under that Act to fell trees comprised in a tree preservation order).

(11) ^{F11}

Textual Amendments

- F2** Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)
- F3** Words inserted by [Town and Country Amenities Act 1974 \(c. 32\), s. 11\(1\)\(7\)](#)
- F4** Words substituted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\), Sch. 2 para. 22\(1\)\(a\)](#), (2) except as regards a tree preservation order made before 11.6.1981
- F5** Words inserted by [Town and Country Planning Act 1984 \(c. 10, SIF 123:1, 2\), ss. 2\(6\), 4\(1\)](#)
- F6** Words substituted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\), Sch. 2 para. 22\(1\)\(b\)](#), (2) except as regards a tree preservation order made before 11.6.1981
- F7** [S. 58\(5\)\(c\)](#) repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\), Sch. 2 para. 22\(1\)\(b\)](#), (2), Sch. 4 except as regards a tree preservation order made before 11.6.1981
- F8** Words repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\), Sch. 2 para. 22\(1\)\(b\)](#), (2) Sch. 4 except as regards a tree preservation order made before 11.6.1981
- F9** Word inserted by [Town and Country Amenities Act 1974 \(c. 32\), s. 11\(2\)\(a\)](#), (7)
- F10** [S. 58\(10\)\(a\)](#) repealed by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\), s. 39\(4\), Sch. 12 Pt. II](#)
- F11** [Ss. 58\(11\), 59\(4\)](#) repealed by [S.I. 1975/1203, art. 3, Sch.](#)

Modifications etc. (not altering text)

- C1** [S. 58](#) modified by [Town and Country Planning Act 1984 \(c. 10, SIF 123:1, 2\), ss. 2\(4\), 4\(1\)](#)
- C2** Reference in [s. 58\(7\)](#) to section 4 of the Forestry Act 1967 to be construed as reference to [Forestry Act 1979 \(c. 21\), s. 1: Interpretation Act 1978 \(c. 30\), s. 17\(2\)\(a\)](#)

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Marginal Citations

- M1** 1967 c. 10.
M2 1967 c. 10.

59 Provisional tree preservation orders.

- (1) If it appears to a . . . ^{F12} 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 58(4) of this Act, an order which contains such a direction shall take effect provisionally on such date as may be specified therein and shall continue in force by virtue of this section until—
 - (a) the expiration of a period of six months beginning with the date on which the order was made; or
 - (b) the date on which the order is confirmed. . . ^{F13},
 whichever first occurs.
- (3) Provision shall be made by regulations under this Act for securing—
 - (a) that the notices to be given of the making of a tree preservation order containing a direction under this section shall include a statement of the effect of the direction. . . ^{F14}.
 - (b) . . . ^{F14}
- (4) ^{F15}

Textual Amendments

- F12** Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)
- F13** Words repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\), Sch. 2 para. 23\(1\)\(a\)](#), (2), Sch. 4 except as regards a tree preservation order made before 11.6.1981
- F14** Word and s. 59(3)(b) repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\), Sch. 2 para. 23\(1\)\(b\)](#), (2), Sch. 4 except as regards a tree preservation order made before 11.6.1981
- F15** Ss. 58(11), 59(4) repealed by [S.I. 1975/1203, art. 3, Sch.](#)

[^{F16}59A Trees in conservation areas.

- (1) Subject to the provisions of this section, any person who, in relation to a tree to which this section applies, does any act which might by virtue of section 58(1)(a) above be prohibited by a tree preservation order shall be guilty of an offence.
- (2) Subject to the provisions of this section, this section applies to any tree in a conservation area but 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) above to prove—

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- (a) that he served notice of his intention to do the act in question, with sufficient particulars to identify the tree, on the planning authority in whose district the tree is or was situated; and
 - (b) that he did the act in question—
 - (i) with the consent of the said planning authority, 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) The Secretary of State may by regulations direct that this section shall not apply in such cases as may be specified in the regulations.
- (5) Without prejudice to the generality of subsection (4) above, the regulations may be framed so as to exempt from the application of this section cases defined by reference to all or any of the following matters, namely—
- (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;
- and the regulations may, in relation to any matter by reference to which an exemption is conferred by them, make different provision for different circumstances.
- (6) Regulations under subsection (4) above may in particular, but without prejudice to the generality of that subsection, exempt from the application of this section cases exempted from the application of section 58 above by subsection (6) of that section.
- (7) It shall be the duty of every planning authority to compile and keep available for public inspection free of charge at all reasonable hours and at a convenient place a list, containing such particulars as the Secretary of State may determine of notices under this section affecting trees in their district.
- (8) If any tree to which this section applies is removed, uprooted or destroyed in contravention of this section or is removed, uprooted or destroyed or dies at a time when its uprooting or felling is authorised only by virtue of the provisions of such regulations under subsection (4) above as are mentioned in subsection (6) above, it shall be the duty of the owner of the land, unless on his application the planning authority dispense with this requirement, to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.
- (9) The duty imposed by subsection (8) above on the owner of any land shall attach to the person who is from time to time the owner of the land and may be enforced as provided by section 99 of this Act and not otherwise.]

Textual Amendments

F16 S. 59A inserted by [Town and Country Amenities Act 1974 \(c. 32\), s. 9](#)

60 Replacement of trees.

- (1) If any tree in respect of which a tree preservation order is for the time being in force, . . . ^{F17}, is removed, [^{F18}uprooted] or destroyed in contravention of the order or [^{F19}, except in the case of a tree to which the order applies as part of a woodland,] is

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removed, [^{F18}uprooted] or destroyed or dies at a time when its [^{F18}uprooting or] felling is authorised only by virtue of the provisions of section 58(6) of this Act relating to [^{F18}uprooting or] felling where urgently necessary in the interests of safety, it shall be the duty of the owner of the land, unless on his application the . . . ^{F20} planning authority dispense with this requirement, to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.

- [^{F21}(1A) 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 either on or near the land on which the trees removed, uprooted or destroyed stood or on such other land as may be agreed between the planning authority and the owner of the land, and (in either case) in such places as may be designated by the planning authority.]
- (2) In relation to any tree planted pursuant to this section, the relevant tree preservation order shall apply as it applied to the original tree.
- (3) The duty imposed by subsection (1) of this section on the owner of any land shall attach to the person who is from time to time the owner of the land and may be enforced as provided by section 99 of this Act and not otherwise.

Textual Amendments

- F17** Words repealed by [Town and Country Planning \(Amendment\) Act 1985 \(c. 52, SIF 123:1, 2\)](#), **ss. 2(1), 3(4)**
- F18** Words inserted by [Town and Country Amenities Act 1974 \(c. 32\)](#), **s. 11(2)(b)**, (7)
- F19** Words inserted by the [Town and Country Planning \(Amendment\) Act 1985 \(c. 52, SIF 123:1, 2\)](#), **ss. 2(2), 3(4)**
- F20** Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), **s. 172(2)**
- F21** [S. 60\(1A\)](#) inserted by [Town and Country Planning \(Amendment\) Act 1985 \(c. 52, SIF 123:1, 2\)](#), **ss. 2(3), 3(4)**

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