



# Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997)

## 1972 CHAPTER 52

### PART V

#### ENFORCEMENT OF CONTROL UNDER PARTS III AND IV

##### *Trees*

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

[<sup>F1</sup>(1) If any person, in contravention of a tree preservation order, cuts down, uproots or wilfully destroys a tree, or 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 and shall be liable—

[ on summary conviction to a fine not exceeding £20,0;<sup>F2</sup>(a)

(b) on conviction on indictment, to a fine,

and, in determining the amount of any fine to be imposed on a person convicted <sup>F3</sup> . . . , 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.]

(2) If any person contravenes the provisions of a tree preservation order otherwise than as mentioned in subsection (1) of this section, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F4</sup>level 4 on the standard scale].

<sup>F5</sup>(3) . . . . .

[<sup>F6</sup>(4) This section shall apply to an offence under section 59A above as it applies to a contravention of a tree preservation order.]

#### Textual Amendments

F1 S. 98(1) substituted by [Town and Country Amenities Act 1974 \(c. 32\), s. 11\(3\)\(7\)](#)

*Status: Point in time view as at 26/03/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Cross Heading: Trees. (See end of Document for details)*

- F2** S. 98(1)(a) substituted (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), s. 54(1)(a) (with s. 84(5)); S.I. 1992/334, art. 4.
- F3** Words in s. 98(1) repealed (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), ss. 54(1)(b), 84(6), Sch. 19, Pt.IV (with s. 84(5)); S.I. 1992/334, art. 4, Sch. 1.
- F4** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21), ss. 289F, 289G (as inserted by Criminal Justice Act 1982 (c. 48), s. 54)
- F5** S. 98(3) repealed (26.3.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:2), ss. 54(1)(c), 84(6), Sch. 19, Pt.IV (with s. 84(5)); S.I. 1992/334, art. 4, Sch. 1.
- F6** S. 98(4) added by Town and Country Amenities Act 1974 (c. 32), s. 11(6)(7)

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

- (1) If it appears to the . . . <sup>F7</sup> planning authority that the provisions of section 60 of this Act, or 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, at any time within two years from the date on which the failure to comply with the said provisions or conditions came to their knowledge, 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.
- <sup>F8</sup>(2) A notice under subsection (1) of this section shall specify a period at the end of which it is to take effect, being a period of not less than twenty-eight days beginning with the date of service of the notice.]
- (3) a person on whom a notice under this section is served may, <sup>F9</sup>either by giving written notice to the Secretary of State before the end of the period specified in accordance with subsection (2) of this section, or 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,], appeal to the Secretary of State against the notice on any of the following grounds—
- (a) that the provisions of the said section 60 or the conditions aforesaid are not applicable or have been complied with;
  - <sup>F10</sup>(ab) that in all the circumstances of the case the duty imposed by the said section 60(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 therein;
  - (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;
- and the provisions of section 85(2) [<sup>F11</sup>to (2D)], (3) and (4)(a) of this Act, and of so much of section 85(5) of this Act as enables the Secretary of State to give directions, shall apply in relation to any such appeal as they apply in relation to an appeal against an enforcement notice.
- (4) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under subsection (3) of this section.
- (5) In section 88 of this Act, and in regulations in force under that section, references to an enforcement notice and an enforcement notice served in respect of any breach of planning control shall include references to a notice under this section; and in relation

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to such a notice the reference in subsection (2) of that section to the person by whom the breach of planning control was committed shall be construed as a reference to any person, other than the owner, responsible for the cutting down, destruction or removal of the original tree or trees.

[<sup>F12</sup>(6) Any person who wilfully obstructs a person acting in the exercise of the power under section 88(1) of this Act (as applied by subsection (5) of this section) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

#### Textual Amendments

- F7** Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)
- F8** [S. 99\(2\)](#) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 54\(2\)\(a\)](#) (with s. 84(5)); [S.I. 1992/334, art. 4.](#)
- F9** Words in [s. 99\(3\)](#) substituted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 54\(2\)\(b\)\(i\)](#) (with s. 84(5)); [S.I. 1992/334, art.4.](#)
- F10** [S. 99\(ab\)](#) inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 54\(2\)\(b\)\(ii\)](#), (with s. 84(5)); [S.I. 1992/334, art. 4.](#)
- F11** Words inserted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\), s. 53\(1\), Sch. 11 Pt. II para. 46](#)
- F12** [S. 99\(6\)](#) inserted (26.3.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:2\), s. 54\(2\)\(c\)](#), (with s. 84(5)); [S.I. 1992/334, art.4.](#)

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