



Town and Country Planning (Scotland) Act 1997

1997 CHAPTER 8

PART VII

SPECIAL CONTROLS

CHAPTER I

TREES

Trees in conservation areas

172 Preservation of trees in conservation areas.

- (1) Subject to the provisions of this section and section 173, any person who, in relation to a tree to which this section applies, does any act which might by virtue of section 160(3)(a) be prohibited by a tree preservation order shall be guilty of an offence.

[^{F1}(1A) Subsection (1) does not apply so far as the act in question is authorised by an order granting development consent.]

- (2) Subject to section 173, 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—
- 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 area the tree is or was situated, and
 - that he did the act in question—

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- (i) with the consent of the planning authority in whose area the tree is or was situated, or
 - (ii) after the expiry of the period of 6 weeks from the date of the notice but before the expiry of the period of 2 years from that date.
- (4) Section 171 shall apply to an offence under this section as it applies to a contravention of a tree preservation order.
- [^{F2}(5) An emanation of the Crown must not, in relation to a tree to which this section applies, do an act mentioned in subsection (1) above unless—
- (a) the first condition is satisfied, and
 - (b) either the second or third condition is satisfied.
- [Subsection (5) does not apply so far as the act in question is authorised by an order ^{F3}(5A) granting development consent.]
- (6) The first condition is that the emanation serves notice of an intention to do the act (with sufficient particulars to identify the tree) on the planning authority in whose area the tree is situated.
- (7) The second condition is that the act is done with the consent of the authority.
- (8) The third condition is that the act is done—
- (a) after the end of the period of six weeks starting with the date of the notice, and
 - (b) before the end of the period of two years starting with that date.]

Textual Amendments

- F1** S. 172(1A) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 57(2)** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)
- F2** S. 172(5)-(8) inserted (12.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), **ss. 96, 121(4)** (with s. 111); S.S.I. 2006/268, art. 3(b)
- F3** S. 172(5A) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 57(3)** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)

Modifications etc. (not altering text)

- C1** S. 172 excluded (1.2.2011) by The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 (S.S.I. 2010/434), regs. 1, **8**
- C2** S. 172 excluded (18.3.2011) by Forth Crossing Act 2011 (asp 2), **ss. 10(3)(b), 80(2)** (with ss. 69, 78); S.S.I. 2011/38, art. 2, sch.
- C3** S. 172(1) excluded (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **s. 59(3)** (with s. 75)
- C4** S. 172(1) excluded (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **s. 59(3)** (with ss. 76, 84)
- C5** S. 172(1) excluded (24.7.2006) by Waverley Railway (Scotland) Act 2006 (asp 13), **s. 31(4)** (with ss. 50(2), 51)
- C6** S. 172(1) excluded (15.1.2007) by Glasgow Airport Rail Link Act 2007 (asp 1), **s. 32(5)** (with s. 50)
- C7** S. 172(1) excluded (19.4.2007) by Edinburgh Airport Rail Link Act 2007 (asp 16), **s. 37(5)(b)** (with ss. 52, 60)
- C8** S. 172(1) excluded (8.5.2007) by Airdrie-Bathgate Railway and Linked Improvements Act 2007 (asp 19), **s. 38(5)(b)** (with ss. 48, 59)

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173 Power to disapply section 172.

- (1) The Secretary of State may by regulations direct that section 172 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 172 cases exempted from section 160 by subsection (6) of that section.

174 Enforcement of controls as respects trees in conservation areas.

- (1) If any tree to which section 172 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 173 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 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 168 and not otherwise.

175 Register of section 172 notices.

It shall be the duty of a 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 172 affecting trees in their district.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied by [S.S.I. 2008/189 art. 53\(3\)](#)
- Act power to apply (with or without modifications) conferred by [2021 asp 9 s. 45\(3\)\(b\)\(c\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 11A inserted by [2006 asp 17 s. 29](#)
- Pt. 12A inserted by [2006 asp 17 s. 30](#)
- Pt. 12A inserted by [2019 asp 13 s. 46\(2\)](#)
- s. 3CD inserted by [2019 asp 13 s. 4\(2\)](#)
- s. 20AA(4)(a)(iii) inserted by [2019 asp 13 s. 14\(6\)](#)
- s. 29(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(3\)\(b\)](#)
- s. 36(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(4\)\(b\)](#)
- s. 36(5)(6) inserted by [2019 asp 13 s. 36\(2\)](#)
- s. 40A inserted by [2019 asp 13 s. 19\(2\)](#)
- s. 43A-43AD substituted for s. 43A by [2019 asp 13 s. 28\(2\)](#)
- s. 47(2)(aa) inserted by [2019 asp 13 s. 28\(3\)\(a\)](#)
- s. 47(2A) inserted by [2019 asp 13 s. 28\(3\)\(b\)](#)
- s. 47(6) inserted by [2019 asp 13 s. 31\(2\)\(c\)](#)
- s. 54A-54F and cross-heading inserted by [2019 asp 13 s. 15\(2\)](#)
- s. 57(2C)(2D) inserted by [2021 asp 9 s. 44\(2\)](#)
- s. 58(4)(fa) inserted by [2019 asp 13 Sch. 2 para. 5\(5\)\(b\)](#)
- s. 61(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(6\)\(b\)](#)
- s. 75(4A) inserted by [2019 asp 13 s. 35\(2\)](#)
- s. 75A(5A) inserted by [2019 asp 13 s. 35\(3\)](#)
- s. 77A inserted by [2019 asp 13 s. 39\(2\)](#)
- s. 135(4A) inserted by [2019 asp 13 s. 43\(2\)\(c\)](#)
- s. 154(1)(c) and word inserted by [2019 asp 13 s. 28\(4\)\(a\)\(ii\)](#)
- s. 154(1A) inserted by [2019 asp 13 s. 28\(4\)\(b\)](#)
- s. 158A(1A) inserted by [2019 asp 13 s. 44\(2\)](#)
- s. 158B-158F and cross-heading inserted by [2019 asp 13 s. 43\(3\)](#)
- s. 183(1)(c) inserted by [2019 asp 13 Sch. 2 para. 5\(7\)\(b\)](#)
- s. 237(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(8\)](#)
- s. 238(3)(a)-(c) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(a\)\(ii\)](#)
- s. 238(5)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(b\)](#)
- s. 238(7) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(c\)](#)