

## PLANNING ETC. (SCOTLAND) ACT 2006

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### EXPLANATORY NOTES

#### THE ACT – SECTION BY SECTION

##### Part 5 – Trees

##### *Section 28 – Tree preservation orders*

164. This section amends Part VII, Chapter I of the 1997 Act. **Subsection (1)** amends section 159 of the 1997 Act by extending to Scottish Ministers the duty, currently only on planning authorities, 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.
165. **Subsection (1)** also amends section 159 of the 1997 Act to place a duty on the planning authority to review existing tree preservation orders (TPOs).
166. **Subsection (2)** amends section 160 of the 1997 Act to expand the powers to include trees, groups of trees, or woodlands of cultural or historical significance, when a planning authority is making a TPO.
167. **Subsection (2)** also amends section 160(6) of the 1997 Act. Currently, under schedule 2 paragraph 4 of the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975, statutory undertakers are not required to notify the planning authority of operations on operational land as described in section 215 of the 1997 Act. Removing the reference to paragraphs (a) and (b) has the effect that anyone carrying out operations, either in accordance with the statutory obligations under section 160(6)(c) of the 1997 Act or as a statutory undertaker, must now notify planning authorities when undertaking operations on a tree, group of trees or woodland covered by a TPO.
168. **Subsection (2)** also inserts a new section 160(8) into the 1997 Act. The Scottish Ministers already have the power to make regulations on the form and manner of tree preservation orders in section 161(3) of the 1997 Act. The new subsection (8) extends the powers to make regulations setting out the form and manner of applications for consent (under tree preservation orders).
169. **Subsection (3)** replaces the existing section 161(1) of the 1997 Act to provide that all tree preservation orders will take effect on the date specified in the order, rather than the date it is confirmed. The provision removes the distinction between tree preservation orders made under previous section 161 and provisional orders under section 163 (which is repealed in the Schedule to the 2006 Act). Under new subsection (1)(b), a tree preservation order will expire unless confirmed by the planning authority within 6 months.
170. **Subsection (4)** inserts a new section 161A into the 1997 Act to provide a new power for a person authorised by the planning authority to enter land for the purposes of affixing a copy of a tree preservation order, where such an order has been made and where a tree or trees may be at risk of imminent damage or destruction. This does not affect any

*These notes relate to the Planning etc. (Scotland) Act 2006  
(asp 17) which received Royal Assent on 20 December 2006*

requirements for giving notice that an order has been made or confirmed which may be made in regulations by virtue of section 161(3)(b) and (4) of the principal Act.

171. **Subsection (6)** inserts a new subsection (3A) into section 168 of the 1997 Act. Section 168 gives the planning authority the power to serve a notice on a land owner who has failed to plant replacement trees, as required by a condition of a consent under a tree preservation order. The new subsection (3A) extends the order applied to the original trees to also cover all replacement trees required as a condition of consent for tree operations as mentioned in section 168(1)(b).