



Town and Country Planning (Scotland) Act 1997

1997 CHAPTER 8

PART VII

SPECIAL CONTROLS

CHAPTER I

TREES

Tree preservation orders

160 Power to make tree preservation orders.

[^{F1}(1) A planning authority may, if it appears to them that the requirements of subsection (1A) are met, make an order specifying any trees, groups of trees or woodlands in their district and providing for their preservation.

(1A) Those requirements are (either or both)—

- (a) that it is expedient in the interests of amenity to make that provision,
- (b) that the trees, groups of trees or woodlands are of cultural or historical significance.]

(2) An order under subsection (1) is in this Act referred to as a “tree preservation order”.

(3) A tree preservation order may, in particular, make provision—

- (a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees except with the consent of the planning authority, and for enabling that authority to give their consent subject to conditions;

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- (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 mentioned in subsection (4), subject to such adaptations and modifications as may be specified in the order.
- (4) The provisions referred to in subsection (3)(c) are—
- (a) the provisions of Part III relating to planning permission and to applications for planning permission, except sections 32, 34, 35, 36(2) and (3), 38, 58 to 62, 69 and 70 and Schedules 6 and 7, and section 65 of the ^{M1}Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997,
 - (b) sections 88 to 92, 94 and 95 (except so far as they relate to purchase notices served in consequence of such orders as are mentioned in section 88(1)(b) or (c)), and
 - (c) section 263.
- (5) 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 159(a), as from the time when those trees are planted.
- (6) Without prejudice to any other exemptions for which provision may be made by a tree preservation order, nothing in such an order shall prohibit the uprooting, felling or lopping of trees if—
- (a) it is urgently necessary in the interests of safety,
 - (b) it is necessary for the prevention or abatement of a nuisance, or
 - [^{F2}(ba) it is authorised by an order granting development consent,]
 - (c) it is in compliance with any obligation imposed by or under an Act of Parliament [^{F3}or an Act of the Scottish Parliament],
- so long as ^{F4}... notice in writing of the proposed operations is given to the planning authority as soon as practicable after the operations become necessary.
- (7) This section shall have effect subject to—
- (a) section 39(2) of the ^{M2}Housing and Planning Act 1986 (saving for effect of section 2(4) of the ^{M3}Opencast Coal Act 1958 on land affected by a tree preservation order despite its repeal), and
 - [^{F5}(b) section 33 of the Forestry and Land Management (Scotland) Act 2018 (felling of trees subject to tree preservation orders).]
- [^{F6}(8) In relation to an application for consent under a tree preservation order the Scottish Ministers may by regulations make provision as to—
- (a) the form and manner in which the application must be made,
 - (b) particulars of such matters as are to be included in the application,
 - (c) any documents or other materials which are to accompany the application.]

Textual Amendments

- F1** S. 160(1)(1A) substituted for s. 160(1) (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 28\(2\)\(a\), 59\(2\)](#); [S.S.I. 2010/400](#), art. 3, sch.
- F2** S. 160(6)(ba) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), [Sch. 2 para. 56](#) (with s. 226); [S.I. 2010/101](#), art. 2 (with art. 6)

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- F3** Words in s. 160(6)(c) added (3.8.2009) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 54(9)**, 59(2); S.S.I. 2009/219, art. 2, sch.
- F4** Words in s. 160(6) repealed (1.2.2011) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 28(2)(b)**, 59(2); S.S.I. 2010/400, art. 3, sch.
- F5** S. 160(7)(b) substituted (1.4.2019) by Forestry and Land Management (Scotland) Act 2018 (asp 8), s. 85(2), **sch. 1 para. 2** (with s. 83); S.S.I. 2019/47, reg. 2 (with regs. 3-22)
- F6** S. 160(8) inserted (26.11.2010) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 28(2)(c)**, 59(2); S.S.I. 2010/400, art. 2(1)(2)(a)

Marginal Citations

- M1** 1997 c. 9.
- M2** 1986 c. 63.
- M3** 1958 c. 69.

161 Form of and procedure applicable to orders.

- [^{F7}(1) Subject to section 249, a tree preservation order—
- (a) takes effect on such date as may be specified in the order, but
 - (b) expires 6 months after it is made unless it has, within that period, been confirmed by the planning authority.
- (1A) An order may be confirmed under subsection (1)(b) without modification or subject to such modifications as the planning authority consider expedient.]
- (2) As soon as a tree preservation order is confirmed, the planning authority shall record it in the appropriate Register of Sasines or, as the case may be, register it in the Land Register of Scotland.
- (3) Provision may be made by regulations with respect to—
- (a) the form of tree preservation orders, and
 - (b) the procedure to be followed in connection with the confirmation of such orders.
- (4) Without prejudice to the generality of subsection (3), the regulations may make provision—
- (a) that, before a tree preservation order is 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 planning authority, and
 - (c) that copies of the order, when confirmed by the authority, shall be served on such persons as may be specified in the regulations.

Textual Amendments

- F7** S. 161(1)(1A) substituted for s. 161(1) (1.2.2011) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 28(3)**, 59(2) (with S.S.I. 2010/431, arts. 1(1), 2); S.S.I. 2010/400, art. 3, sch.

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[^{F8}161A Imminent danger to trees: entry to affix copy of tree preservation order

- (1) If it appears to a planning authority that a tree, group of trees or woodlands—
- (a) on land in their district, and
 - (b) in respect of which they have made a tree preservation order,
- may be in imminent danger of being cut down, topped, lopped, uprooted, wilfully damaged or wilfully destroyed and accordingly that it is expedient that a copy of the order should be affixed conspicuously to the tree, group of trees or woodlands in question, a person duly authorised in writing by them may enter the land and so affix such a copy.
- (2) Subsection (1) is without prejudice to any provision made by virtue of section 161(3) (b) and (4) as respects notice of the making of the order.]

Textual Amendments

F8 S. 161A inserted (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **28(4)**, 59(2); S.S.I. 2010/400, art. 3, sch.

[^{F9}162 Tree preservation: Forestry Commissioners

- (1) A tree preservation order does not have effect in respect of anything done—
- ^{F10}(a)
 - (b) by or on behalf of any other person in accordance with a relevant plan which is for the time being in force.

[^{F11}(2) A relevant plan is—

- (a) a plan of operations or other working plan approved by the Forestry Commissioners under—
 - (i) a forestry dedication agreement within the meaning of section 5 of the Forestry Act 1967, or
 - (ii) conditions of a grant or loan made under section 1 of the Forestry Act 1979,
 - (b) a plan approved by the Scottish Ministers under conditions of financial assistance provided under section 71 of the Forestry and Land Management (Scotland) Act 2018, provided that the plan relates to the promotion of sustainable forest management, or
 - (c) any other plan approved by the Scottish Ministers relating to sustainable forest management.]
- (3) A reference to a provision of the Forestry Act 1967 or the Forestry Act 1979 [^{F12}or the Forestry and Land Management (Scotland) Act 2018] includes a reference to a corresponding provision replaced by that provision or any earlier corresponding provision.]

Textual Amendments

F9 S. 162 substituted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), ss. **95**, 121(4) (with s. 111); S.S.I. 2006/268, art. 3(b)

F10 S. 162(1)(a) omitted (1.4.2019) by virtue of [The Forestry and Land Management \(Scotland\) Act 2018 \(Consequential Amendments\) Regulations 2019 \(S.S.I. 2019/125\)](#), regs. 1(2), **9(2)(a)**

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- F11** S. 162(2) substituted (1.4.2019) by [The Forestry and Land Management \(Scotland\) Act 2018 \(Consequential Amendments\) Regulations 2019 \(S.S.I. 2019/125\)](#), regs. 1(2), **9(2)(b)**
- F12** Words in s. 162(3) inserted (1.4.2019) by [The Forestry and Land Management \(Scotland\) Act 2018 \(Consequential Amendments\) Regulations 2019 \(S.S.I. 2019/125\)](#), regs. 1(2), **9(2)(c)**

^{F13}163 Provisional tree preservation orders.

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Textual Amendments

- F13** S. 163 repealed (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), **sch.** (with S.S.I. 2010/431, arts. 1(1), 2); S.S.I. 2010/400, art. 3, sch.

164 Power for Secretary of State to make tree preservation orders.

- (1) If it appears to the Secretary of State that it is expedient that a tree preservation order, or an order amending or revoking such an order, should be made, he may himself make such an order.
- (2) Such an order made by the Secretary of State shall have the same effect as if it had been made by the planning authority and [^{F14}timeously] confirmed by them under this Chapter.
- (3) The Secretary of State shall not make such an order without consulting the planning authority.
- (4) The provisions of this Chapter and of any regulations made under it with respect to the procedure to be followed in connection with the making and confirmation of any order mentioned in subsection (1) and the service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order by virtue of subsection (1), its making by him and the service of copies of it.

Textual Amendments

- F14** Word in s. 164(2) inserted (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 28(5), 59(2)**; S.S.I. 2010/400, art. 3, sch.

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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\(9\)\(c\)](#)