



Town and Country Planning (Scotland) Act 1997

1997 CHAPTER 8

PART VII

SPECIAL CONTROLS

CHAPTER I

TREES

Consequences of tree removal etc.

167 Replacement of trees

- (1) If any tree in respect of which a tree preservation order is for the time being in force—
 - (a) is removed, uprooted or destroyed in contravention of the order, or
 - (b) except in the case of a tree to which the order applies as part of a woodland, is removed, uprooted or destroyed or dies at a time when its felling or uprooting is authorised only by virtue of section 160(6)(a),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) 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—
 - (a) on or near the land on which the trees removed, uprooted or destroyed stood, or

Status: This is the original version (as it was originally enacted).

- (b) on such other land as may be agreed between the planning authority and the owner of the land,
and in such places as may be designated by the planning authority.
- (4) In relation to any tree planted pursuant to this section, the relevant tree preservation order shall apply as it applied to the original tree.
- (5) The duty imposed by subsection (1) on the owner of any land shall attach to the person who is from time to time the owner of the land.

168 Enforcement of duties as to replacement of trees

- (1) If it appears to the planning authority that—
 - (a) the provisions of section 167, or
 - (b) 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, the authority may 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.
- (2) A notice under subsection (1) may be served by a planning authority only within 2 years from the date on which the failure to comply with those provisions or conditions came to the knowledge of the authority.
- (3) A notice under subsection (1) shall specify a period at the end of which it is to take effect, being a period of not less than 28 days beginning with the date of service of the notice.
- (4) The duty imposed by section 167(1) may only be enforced as provided by this section and not otherwise.

169 Appeal against section 168 notice

- (1) A person on whom a notice under section 168(1) is served may appeal to the Secretary of State against the notice on any of the following grounds—
 - (a) that the provisions of section 167 or, as the case may be, the conditions mentioned in section 168(1)(b) are not applicable or have been complied with;
 - (b) that in all the circumstances of the case the duty imposed by section 167 should be dispensed with in relation to any tree;
 - (c) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it;
 - (d) 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;
 - (e) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose.
- (2) An appeal under subsection (1) may be made either by giving written notice to the Secretary of State before the end of the period specified in accordance with section 168(3), or by sending such notice to him in a properly addressed and prepaid 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.

- (3) A person who gives notice under subsection (2) shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed under subsection (4), a statement in writing—
- (a) specifying the grounds on which he is appealing against the notice under section 168(1), and
 - (b) giving such further information as may be so prescribed.
- (4) The Secretary of State may prescribe the procedure to be followed on appeals under this section, and (without prejudice to the generality of the foregoing provisions of this subsection) in so prescribing—
- (a) may specify the time within which an appellant is to submit a statement under subsection (3) and the matters on which information is to be given in such a statement;
 - (b) may require the planning authority to submit, within such time as may be specified, a statement indicating the submissions which they propose to put forward on the appeal;
 - (c) may specify the matters to be included in such a statement;
 - (d) may require the authority or the appellant to give such notice of an appeal under this section as may be specified to such persons as may be specified;
 - (e) may require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be specified, a copy of the notice and a list of the persons on whom the notice has been served.
- (5) The Secretary of State may—
- (a) dismiss an appeal if the appellant fails to comply with subsection (3) within the time prescribed under subsection (4)(a), and
 - (b) allow an appeal and quash the notice under section 168(1) if the planning authority fail to comply with any requirement imposed by virtue of paragraph (b), (c) or (e) of subsection (4).
- (6) Subject to subsection (5), the Secretary of State shall, if either the planning authority or the appellant so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by him for the purpose.
- (7) Where such an appeal is brought, the notice under section 168(1) shall be of no effect pending the final determination or the withdrawal of the appeal.
- (8) On such an appeal the Secretary of State may—
- (a) correct any defect, error or misdescription in the notice under section 168(1), or
 - (b) vary its terms,
- if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority.
- (9) On the determination of such an appeal the Secretary of State shall give directions for giving effect to the determination including, where appropriate, directions for quashing the notice under section 168(1).
- (10) Schedule 4 applies to appeals under this section.

170 Execution and cost of works required by section 168 notice

- (1) If, within the period specified in a notice under section 168(1) for compliance with it, or within such extended period as the planning authority may allow, any trees which are required to be planted by a notice under that section have not been planted, the planning authority may—
 - (a) enter the land and plant those trees, and
 - (b) recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
- (2) If the person mentioned in subsection (1)(b) was entitled to appeal to the Secretary of State but did not do so, he shall not be entitled in proceedings under that subsection to dispute the validity of the action taken in accordance with the notice by the planning authority.
- (3) In computing the amount of the expenses which may be recovered by them under subsection (1), a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.
- (4) Where a notice under section 168(1) has been served—
 - (a) any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with the notice, and
 - (b) any sums paid by the owner or lessee of any land under subsection (1) in respect of expenses incurred by the planning authority in planting trees required by such a notice to be planted,
 shall be recoverable from the person responsible for the cutting down, destruction or removal of the original tree or trees.
- (5) If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by a notice under section 168(1), the sheriff may by warrant authorise the owner to go on to the land and carry out the work.
- (6) A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal by the planning authority.
- (7) Where such materials have been sold the planning authority shall pay the owner the proceeds of the sale after deducting any expenses recoverable by them from him.
- (8) Where a planning authority seek under subsection (1) to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that—
 - (a) he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and
 - (b) he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,
 his liability shall be limited to the total amount of the money which he has or has had in his hands on behalf of that other person.
- (9) A planning authority who by reason of subsection (8) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.

- (10) Any person who wilfully obstructs a person acting in the exercise of the power conferred by subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

171 Penalties for non-compliance with tree preservation order

- (1) If any person, in contravention of a tree preservation order—
- (a) cuts down, uproots or wilfully destroys a tree, or
 - (b) 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.
- (2) A person guilty of an offence under subsection (1) shall be liable—
- (a) on summary conviction to a fine not exceeding £20,000, and
 - (b) on conviction on indictment, to a fine.
- (3) In determining the amount of any fine to be imposed on a person convicted of an offence under subsection (1), 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.
- (4) If any person contravenes the provisions of a tree preservation order otherwise than as mentioned in subsection (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.