



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART VII

#### SPECIAL CONTROLS

#### CHAPTER I

#### TREES

#### *General duty of planning authorities as respects trees*

#### **159 Planning permission to include appropriate provision for preservation and planting of trees**

It shall be the duty of the planning authority—

- (a) 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, and
- (b) to make such orders under section 160 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.

#### *Tree preservation orders*

#### **160 Power to make tree preservation orders**

- (1) If it appears to a planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their district, they may

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for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.

- (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;
  - (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 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
  - (c) it is in compliance with any obligation imposed by or under an Act of Parliament,
- so long as, where paragraph (a) or (b) applies, 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 Housing and Planning Act 1986 (saving for effect of section 2(4) of the Opencast Coal Act 1958 on land affected by a tree preservation order despite its repeal), and
  - (b) section 15 of the Forestry Act 1967 (licences under that Act to fell trees comprised in a tree preservation order).

## **161 Form and procedure applicable to orders**

- (1) Subject to section 163 and 249, a tree preservation order shall not take effect until it is confirmed by the planning authority and the planning authority may confirm any such

order either without modification or subject to such modifications as they 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.

## **162 Orders affecting land where Forestry Commissioners interested**

- (1) In relation to land in which the Forestry Commissioners have an interest, a tree preservation order may be made only if—
  - (a) there is not in force in respect of the land a plan of operations or other working plan approved by the Commissioners under a forestry dedication agreement, and
  - (b) the Commissioners consent to the making of the order.
- (2) For the purposes of subsection (1), the Forestry Commissioners have an interest in land if—
  - (a) they have made a grant or loan under section 1 of the Forestry Act 1979 in respect of it, or
  - (b) there is a forestry dedication agreement in force in respect of it.
- (3) A tree preservation order in respect of such land shall not have effect so as to prohibit, or to require any consent for, the cutting down of a tree in accordance with a plan of operations or other working plan approved by the Forestry Commissioners, and for the time being in force, under a forestry dedication agreement or under the conditions of a grant or loan made under section 1 of the Forestry Act 1979.
- (4) In this section—
  - (a) “a forestry dedication agreement” means an agreement entered into with the Commissioners under section 5 of the Forestry Act 1967; and
  - (b) references to provisions of the Forestry Act 1967 and the Forestry Act 1979 include references to any corresponding provisions replaced by those provisions or by earlier corresponding provisions.

**163 Provisional tree preservation orders**

- (1) If it appears to a planning authority that a tree preservation order proposed to be made by that authority should take effect immediately without previous confirmation, they may include in the order as made by them a direction that this section shall apply to the order.
- (2) Notwithstanding section 161(1), an order which contains such a direction—
  - (a) shall take effect provisionally on such date as may be specified in it, and
  - (b) shall continue in force by virtue of this section until—
    - (i) the expiration of a period of 6 months beginning with the date on which the order was made, or
    - (ii) the date on which the order is confirmed,whichever first occurs.
- (3) Provision shall be made by regulations for securing that the notices to be given of the making of a tree preservation order containing a direction under this section shall include a statement of the effect of the direction.

**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 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.

*Compensation for loss or damage caused by orders etc.*

**165 Compensation in respect of tree preservation orders**

- (1) A tree preservation order may make provision for the payment by the planning authority, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of loss or damage caused or incurred in consequence of—
  - (a) the refusal of any consent required under the order, or
  - (b) the grant of any such consent subject to conditions.
- (2) Except in so far as may be otherwise provided by section 166(5), any tree preservation order or any regulations made under this Act, any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal.

- (3) In relation to the determination of any such question, the provisions of sections 9 and 11 of the Land Compensation (Scotland) Act 1963 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

## **166 Compensation in respect of requirement as to replanting of trees**

- (1) This section applies where—
- (a) a requirement is imposed by the planning authority or the Secretary of State under a tree preservation order for securing the replanting of all or any part of a woodland area which is felled in the course of forestry operations permitted by or under the order, and
  - (b) the Forestry Commissioners decide not to make any grant or loan under section 1 of the Forestry Act 1979 in respect of the replanting by reason that the requirement frustrates the use of the woodland area for the growing of timber or other forest products for commercial purposes and in accordance with the rules or practice of good forestry.
- (2) Where this section applies, the planning authority exercising functions under the tree preservation order shall be liable, on the making of a claim in accordance with this section, to pay compensation in respect of such loss or damage, if any, as is caused or incurred in consequence of compliance with the requirement.
- (3) The Forestry Commissioners shall, at the request of the person under a duty to comply with such a requirement as is mentioned in subsection (1)(a), give a certificate stating—
- (a) whether they have decided not to make such a grant or loan as is mentioned in subsection (1)(b), and
  - (b) if so, the grounds for their decision.
- (4) A claim for compensation under this section must be served on the planning authority—
- (a) within 12 months from the date on which the requirement was made, or
  - (b) where an application has been made to the Secretary of State for the determination of any question relating to the reasonableness of a requirement, within 12 months from the date of the determination of the Secretary of State, but subject in either case to such extension of that period as the planning authority may allow.
- (5) Any question of disputed compensation under this section shall be determined in accordance with section 70 of the Countryside (Scotland) Act 1967.

*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),

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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
  - (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,

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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.

#### *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.
- (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—
- (a) 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
  - (b) 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.

### **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.

### *Rights of entry*

#### **176 Rights to enter without warrant**

- (1) Any person duly authorised in writing by a planning authority may enter any land for the purpose of—
  - (a) surveying it in connection with making or confirming a tree preservation order with respect to the land,
  - (b) ascertaining whether an offence under section 171 or 172 has been committed on the land, or
  - (c) determining whether a notice under section 168(1) should be served on the owner of the land,if there are reasonable grounds for entering for the purpose in question.
- (2) Any person duly authorised in writing by the Secretary of State may enter any land for the purpose of surveying it in connection with making, amending or revoking a tree preservation order with respect to the land if there are reasonable grounds for entering for that purpose.
- (3) Any person who is duly authorised in writing by a planning authority may enter any land in connection with the exercise of any functions conferred on the authority by or under sections 159 to 163 and 167 to 170.
- (4) Any person who is an officer of the Valuation Office may enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation in respect of any land which is payable by the planning authority under section 165.
- (5) Any person who is duly authorised in writing by the Secretary of State may enter any land in connection with the exercise of any functions conferred on the Secretary of State by or under sections 160 to 162, 168(1) to (3), 169 and 170.
- (6) The Secretary of State shall not authorise any person as mentioned in subsection (2) without consulting the planning authority.
- (7) Admission shall not be demanded as of right—
  - (a) by virtue of subsection (1) or (2) to any building used as a dwellinghouse, or
  - (b) by virtue of subsection (3), (4) or (5) to any land which is occupied,unless 24 hours' notice of the intended entry has been given to the occupier.
- (8) Any right to enter by virtue of this section shall be exercised at a reasonable hour.

#### **177 Right to enter under warrant**

- (1) If the sheriff is satisfied—
  - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 176(1) or (2), and
  - (b) that—
    - (i) admission to the land has been refused, or a refusal is reasonably apprehended, or
    - (ii) the case is one of urgency,he may issue a warrant authorising any person duly authorised in writing by a planning authority or, as the case may be, the Secretary of State to enter the land.

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- (2) For the purposes of subsection (1)(b)(i) of this section admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (3) A warrant authorises entry on one occasion only and that entry must be—
  - (a) within one month from the date of the issue of the warrant, and
  - (b) at a reasonable hour, unless the case is one of urgency.

### **178 Rights of entry: supplementary provisions**

- (1) Any power conferred under or by virtue of section 176 or 177 to enter land (referred to in this section as “a right of entry”) shall be construed as including power to take samples from any tree and samples of the soil.
- (2) A person authorised to enter land in the exercise of a right of entry—
  - (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering,
  - (b) may take with him such other persons as may be necessary, and
  - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.
- (3) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) If any damage is caused to land or moveable property in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State.