



## 2011 CHAPTER 25

### Part 4

#### Additional planning control

##### Chapter 3

##### Trees

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**Modifications etc. (not altering text)**

- C1** Pt. 4 (except chpts. 1, 2) applied with modification(s) (1.4.2015) by [The Planning General Regulations \(Northern Ireland\) 2015 \(S.R. 2015/39\)](#), regs. 1(1), 2 (with regs. 3-10)

#### **Planning permission to include appropriate provision for trees**

**121** It shall be the duty of a council, and the Department, to—

- (a) ensure, wherever 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) make such orders under section 122 as appear to the council or, as the case may be, the Department to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.

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**Modifications etc. (not altering text)**

- C2** Ss. 105-155: transfer of functions (8.5.2016) by [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

**Commencement Information**

- I1** S. 121 in operation at 13.2.2015 for specified purposes by [S.R. 2015/49, art. 2, Sch. 1](#)
- I2** S. 121 in operation at 1.4.2015 in so far as not already in operation by [S.R. 2015/49, art. 3, Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159, art. 2](#))

**Tree preservation orders: councils**

**122.**—(1) Where it appears to a council that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in its district, it may for that purpose make an order (in this Act referred to as a “tree preservation order”) with respect to such trees, groups of trees or woodlands as may be specified in the order; and in particular, provision may be made by any such order—

- (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 council, and for enabling the council to give its consent subject to conditions;
- (b) for securing the replanting, in such manner as may be specified 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 Part 3, subject to such adaptations and modifications as may be specified in the order.

(2) 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 121(a), as from the time when those trees are planted.

(3) A tree preservation order shall not take effect until it is confirmed by the council and the council may confirm any such order either without modification or subject to such modifications as it considers expedient.

(4) The Department may make regulations as to the form of tree preservation orders and the procedure to be followed in connection with the making and confirmation of such orders; and the regulations may, in particular, make provision as follows—

- (a) that, before a tree preservation order is confirmed by a council, notice of the making of the order shall be given to the owners 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 council; and

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(c) that copies of the order, when confirmed by the council, must be served on such persons as may be specified in the regulations.

(5) Without prejudice to any other exemptions for which provision may be made by a tree preservation order, no such order shall apply to the cutting down, uprooting, topping or lopping of trees which are dead or have become dangerous or the cutting down, uprooting, topping or lopping of any trees in compliance with any obligations imposed by or under any statutory provision or so far as may be necessary for the prevention or abatement of a nuisance.

**Modifications etc. (not altering text)**

**C2** Ss. 105-155: transfer of functions (8.5.2016) by [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

**Commencement Information**

**I3** S. 122 in operation at 13.2.2015 for specified purposes by [S.R. 2015/49](#), art. 2, **Sch. 1**  
**I4** S. 122 in operation at 1.4.2015 in so far as not already in operation by [S.R. 2015/49](#), art. 3, **Sch. 1** (with **Sch. 2**) (as amended (16.3.2016) by [S.R. 2016/159](#), art. 2)

**Provisional tree preservation orders**

**123.**—(1) If it appears to a council that a tree preservation order proposed to be made by that council should take effect immediately without previous confirmation, it may include in the order as made by it a direction that this section shall apply to the order.

(2) Notwithstanding section 122(3), 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.

**Modifications etc. (not altering text)**

**C2** Ss. 105-155: transfer of functions (8.5.2016) by [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

**Commencement Information**

**I5** S. 123 in operation at 13.2.2015 for specified purposes by [S.R. 2015/49](#), art. 2, **Sch. 1**

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*Changes to legislation: There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011, Chapter 3. (See end of Document for details)*

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- I6** S. 123 in operation at 1.4.2015 in so far as not already in operation by [S.R. 2015/49, art. 3, Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159, art. 2](#))

### Power for Department to make tree preservation orders

**124.—(1)** If it appears to the Department, after consultation with the appropriate council, to be expedient that a tree preservation order or an order amending or revoking such an order should be made, the Department may make such an order.

(2) Any order so made by the Department shall have the same effect as if it had been made by the appropriate council and confirmed by it under this Chapter.

(3) 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 to which subsection (1) applies and the service of copies of it as confirmed shall have effect, subject to any necessary modifications—

- (a) in relation to any proposal by the Department to make such an order,
- (b) in relation to the making of it by the Department, and
- (c) in relation to the service of copies of it as so made.

#### Modifications etc. (not altering text)

- C2** [Ss. 105-155](#): transfer of functions (8.5.2016) by [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), [Sch. 5 Pt. 2](#) (with art. 9(2))

#### Commencement Information

- I7** S. 124 in operation at 13.2.2015 for specified purposes by [S.R. 2015/49, art. 2, Sch. 1](#)
- I8** S. 124 in operation at 1.4.2015 in so far as not already in operation by [S.R. 2015/49, art. 3, Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159, art. 2](#))

### Replacement of trees

**125.—(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 cutting down or uprooting is authorised only by virtue of section 122 on the grounds that it is dying or dead or has become dangerous,

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 the owner reasonably can.

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(2) The duty imposed by subsection (1) does not apply to an owner if on application by the owner the council dispenses 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 council and the owner of the land,

and in such places as may be designated by the council.

(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.

**Modifications etc. (not altering text)**

- C2** Ss. 105-155: transfer of functions (8.5.2016) by [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

**Commencement Information**

- I9** S. 125 in operation at 13.2.2015 for specified purposes by [S.R. 2015/49](#), art. 2, **Sch. 1**
- I10** S. 125 in operation at 1.4.2015 in so far as not already in operation by [S.R. 2015/49](#), art. 3, **Sch. 1** (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159](#), art. 2)

**Penalties for contravention of tree preservation orders**

**126.**—(1) If any person, in contravention of a tree preservation order, cuts down, uproots or wilfully destroys a tree, or wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it, that person shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding £100,000;
- (b) on conviction on indictment, to a fine.

(2) In determining the amount of any fine to be imposed on a person convicted of an offence under subsection (1), the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

(3) If any person contravenes a tree preservation order otherwise than as mentioned in subsection (1), that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**Modifications etc. (not altering text)**

- C2** Ss. 105-155: transfer of functions (8.5.2016) by **The Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76)**, art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

**Commencement Information**

- I11** S. 126 in operation at 13.2.2015 for specified purposes by **S.R. 2015/49**, art. 2, **Sch. 1**
- I12** S. 126 in operation at 1.4.2015 in so far as not already in operation by **S.R. 2015/49**, art. 3, **Sch. 1** (with **Sch. 2**) (as amended (16.3.2016) by **S.R. 2016/159**, art. 2)

**Preservation of trees in conservation areas**

**127.—**(1) Subject to the provisions of this section and section 128, any person who, in relation to a tree to which this section applies, does any act which might by virtue of section 122(1)(a) be prohibited by a tree preservation order shall be guilty of an offence.

(2) Subject to section 128, 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 that person served notice of his or her intention to do the act in question (with sufficient particulars to identify the tree) on the council in whose district the tree is or was situated; and
- (b) that that person did the act in question—
  - (i) with the consent of the council in whose district 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 126 shall apply to an offence under this section as it applies to a contravention of a tree preservation order.

(5) An emanation of the Crown must not, in relation to a tree to which this section applies, do any act mentioned in subsection (1) unless—

- (a) the first condition is satisfied; and
- (b) either the second or third condition is satisfied.

(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 council in whose district the tree is or was situated.

(7) The second condition is that the act is done with the consent of the council in whose district the tree is or was situated.

(8) The third condition is that the act is done—

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- (a) after the end of the period of 6 weeks starting with the date of the notice; and
- (b) before the end of the period of 2 years starting with that date.

**Modifications etc. (not altering text)**

- C2** Ss. 105-155: transfer of functions (8.5.2016) by [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), [Sch. 5 Pt. 2](#) (with art. 9(2))
- C3** S. 127 excluded (1.4.2015) by [The Planning \(Trees\) Regulations \(Northern Ireland\) 2015 \(S.R. 2015/84\)](#), regs. 1(1), [9\(1\)](#) (with reg. 11(7))

**Commencement Information**

- I13** S. 127 in operation at 13.2.2015 for specified purposes by [S.R. 2015/49](#), art. 2, [Sch. 1](#)
- I14** S. 127 in operation at 1.4.2015 in so far as not already in operation by [S.R. 2015/49](#), art. 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159](#), art. 2)

**Power to disapply section 127**

**128.**—(1) The Department may by regulations direct that section 127 shall not apply in such cases as may be specified in the regulations.

(2) Regulations under subsection (1) may, in particular, 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) Regulations under subsection (1) may, in particular, exempt from the application of section 127 cases exempted from section 122 by subsection (5) of that section.

**Modifications etc. (not altering text)**

- C2** Ss. 105-155: transfer of functions (8.5.2016) by [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), [Sch. 5 Pt. 2](#) (with art. 9(2))

**Commencement Information**

- I15** S. 128 in operation at 13.2.2015 for specified purposes by [S.R. 2015/49](#), art. 2, [Sch. 1](#)
- I16** S. 128 in operation at 1.4.2015 in so far as not already in operation by [S.R. 2015/49](#), art. 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159](#), art. 2)

**Changes to legislation:**

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