



2011 CHAPTER 25

PART 5

ENFORCEMENT

*Trees*

**Enforcement of duties as to replacement of trees**

**164.**—(1) If it appears to a council that—

- (a) the provisions of section 125; 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 in its district, the council may serve on the owner of the land a notice requiring the owner, 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 only be served within 5 years from the date of the alleged failure to comply with those provisions or conditions.

(3) A notice under subsection (1) must specify a period at the end of which it is to take effect.

(4) The specified period must be a period of not less than 28 days beginning with the date of service of the notice.

(5) The duty imposed by section 125(1) may only be enforced as provided by this section and not otherwise.

### **Appeals against section 164 notices**

**165.**—(1) A person on whom a notice under section 164(1) is served may appeal to the planning appeals commission against the notice on any of the following grounds—

- (a) that the provisions of section 125 or, as the case may be, the conditions mentioned in section 164(1)(b) are not applicable or have been complied with;
- (b) that in all the circumstances of the case the duty imposed by section 125(1) 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) shall be made by serving written notice of the appeal on the planning appeals commission before the end of the period specified in accordance with section 164(3) and such notice shall indicate the grounds of the appeal and state the facts on which it is based.

(3) On any such appeal the planning appeals commission must, if either the appellant or the council so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(4) Where an appeal is brought under this section, the notice under section 164(1) shall be of no effect pending the final determination or the withdrawal of the appeal.

(5) On an appeal under this section the planning appeals commission may—

- (a) correct any defect, error or misdescription in the notice; or
- (b) vary any of its requirements,

if it is satisfied that the correction or variation will not cause injustice to the appellant or the council.

(6) Where the planning appeals commission determines to allow the appeal, it may quash the notice.

(7) The planning appeals commission must give any directions necessary to give effect to its determination on the appeal.

(8) Where any person has appealed to the planning appeals commission under this section against a notice, neither that person nor any other shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

**Execution and cost of works required by section 164 notice**

**166.**—(1) If, within the period specified in a notice under section 164(1) for compliance with it, or within such extended period as the council may allow, any trees which are required to be planted by a notice under that section have not been planted, the council may—

- (a) enter the land and plant those trees; and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(2) Where such a notice has been served—

- (a) any expenses incurred by the owner of any land for the purpose of complying with the notice; and
- (b) any sums paid by the owner of any land under subsection (1) in respect of expenses incurred by the council in planting trees required by such a notice to be planted,

shall be deemed to be incurred or paid for the use and at the request of any person, other than the owner, responsible for the cutting down, destruction or removal of the original tree or trees.

(3) Subsections (3) to (9) of section 146 shall with any necessary modifications apply to a notice under this section as those subsections apply to an enforcement notice.

**Enforcement of controls as respects trees in conservation areas**

**167.**—(1) If any tree to which section 127 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 128 as are mentioned in subsection (3) 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 the owner reasonably can.

(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) 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 164 and not otherwise.