



**Isle of Man**

*Ellan Vannin*

**AT 6 of 1993**

**TREE PRESERVATION ACT 1993**





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## TREE PRESERVATION ACT 1993

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**Isle of Man***Ellan Vannin*

## TREE PRESERVATION ACT 1993

<i>Received Royal Assent:</i>	18 May 1993
<i>Passed:</i>	18 May 1993
<i>Commenced:</i>	18 May 1993

**AN ACT** to make fresh provision for the preservation of trees.

**GENERAL NOTE:** The maximum fines in this Act are as increased by the *Criminal Justice (Penalties, Etc.) Act 1993* s 1.

### 1 General duties of Departments etc

- (1) In any case where the exercise by a public authority of any of its functions is likely to affect any tree the cutting down of which would (apart from section 3(3) or (4) or section 4) require a licence, the authority —
  - (a) shall have regard to the need to preserve trees in the interests of amenity; and
  - (b) unless it is impracticable to do so, shall consult the Department of Environment, Food and Agriculture (“the Department”) before exercising that function.<sup>1</sup>
- (2) In this section “public authority” means a Department, Statutory Board or local authority or the Manx Museum and National Trust.

### 2 Registration of trees and woods

- (1) If it appears to the Department, that any tree, group of trees or wood ought to be preserved in the interests of amenity, the Department may enter particulars of the tree, group of trees or wood in a register kept for the purpose.<sup>2</sup>
- (2) In this Act “**registered tree**” means —
  - (a) a tree particulars of which are entered in the register, or
  - (b) a tree forming part of a group of trees or wood particulars of which are so entered.
- (3) The register —

- (a) may be kept otherwise than in documentary form; and
  - (b) shall include a map (on a scale of not less than 1/10,560) on which there shall be indicated the location of every tree, group of trees or wood entered in the register.
- (4) The Department shall in writing notify the owner and occupier of the land on which a tree, groups of trees or wood is growing —
- (a) of its entry in the register; and
  - (b) of the cancellation or variation of the entry.
- (5) The Department shall allow any person to inspect the register at its offices free of charge at all reasonable hours and to take a copy of any entry therein, and of any relevant extract from the map referred to in subsection (3)(b), at such reasonable charge (if any) as the Department may determine.

### 3 Restriction on cutting down trees etc

[1973/16/1]

- (1) If any person —
- (a) cuts down, uproots or intentionally or recklessly destroys a tree; or
  - (b) tops, lops or intentionally or recklessly damages a tree in such a manner as to be likely to destroy it; or
  - (c) tops or lops a registered tree, or
  - (d) causes or permits another to do anything falling within paragraph (a), (b) or (c),
- he or she is guilty of an offence.<sup>3</sup>
- (2) A person guilty of an offence under subsection (1) is liable —
- (a) on summary conviction, to a fine not exceeding £20,000;
  - (b) on conviction on information, to a fine.<sup>4</sup>
- (2A) Subsection (1) does not prevent the cutting down, uprooting, destruction, topping, lopping or damaging of a tree in accordance with a licence granted by the Department under this Act.<sup>5</sup>
- (3) Subsection (1) does not prevent the cutting down, uprooting, destruction, topping, lopping or damaging of —
- (a) a dead tree;
  - (b) a fruit tree on land comprised in an orchard or garden;
  - (c) a coniferous tree in a plantation grown for commercial purposes; or
  - (d) any tree (not being a registered tree) with a diameter not exceeding 8 centimetres or, in the case of underwood, not

exceeding 15 centimetres, measured over the bark at a point 152 centimetres above the ground.

- (4) Subsection (1) does not prevent the cutting down, uprooting, destruction, topping, lopping or damaging of a tree in accordance with —
- (a) a forestry covenant under section 5 of the *Forestry Act 1984*; or
  - (b) a scheme for the management of a wood which has been approved in writing by the Department.

#### **4 Defences to proceedings for offence under s 3**

- (1) In proceedings for an offence under section 3 it is a defence to prove —
- (a) that the action in question was urgently necessary —
    - (i) in the interests of safety or health, or
    - (ii) for the preservation of the tree in question; and
  - (b) that it was not possible to meet those needs by remedial or repair works or temporary measures; and
  - (c) that the action taken was limited to the minimum measures immediately necessary; and
  - (d) that notice in writing specifying the action taken and explaining the need for it was given to the Department —
    - (i) as soon as reasonably practicable, and
    - (ii) in any event, within 48 hours after the action was taken.<sup>6</sup>
- (2) In proceedings for an offence under section 3 it is a defence to prove that —
- (a) the action in question was taken to prevent or abate a nuisance; and
  - (b) notice in writing specifying the action taken and explaining the need for it was given to the Department not less than 28 days before it was taken.
- (3) In proceedings for an offence under section 3 it is a defence to prove that the action in question was taken in exercise of a right, or in performance of an obligation, conferred or imposed by an enactment other than this Act.
- (4) In proceedings for an offence under section 3 it is a defence to prove that at the time of the action in question —
- (a) development operations were being, or were about to be, carried out on the land on which the tree in question stood; and
  - (b) planning approval had been granted for those operations and was still in force; and
  - (c) either —

- (i) the planning authority or the Department had previously consented in writing to the action, or<sup>7</sup>
  - (ii) it was a condition of the planning approval that the prior consent of the Department be obtained to the action, and that consent had been obtained.
- (5) In this section —
- “development operations” means operations which constitute development for the purpose of the *Town and Country Planning Act 1999*;
- “planning approval” means approval for development granted pursuant to a development order under Part 2 of that Act.<sup>8</sup>

## 5 Application for and grant of licence

[1973/16/2]

- (1) An application for a licence shall be made to the Department in writing by a person having such an interest in the land on which the tree stands as enables him, with or without the consent of another, to take the action for which the licence is sought.
- (2) On an application for a licence the Department may —
- (a) grant the licence, either unconditionally or subject to conditions permitted by subsection (3); or
  - (b) refuse the licence;
- but shall grant the licence unconditionally except where it appears to the Department expedient not to do so in the interests of good forestry, agriculture or the amenities of the area.
- (3) The conditions which may be imposed under subsection (2)(a) are such as the Department may consider expedient —
- (a) in the case of a licence to cut down, uproot or destroy a tree, for securing the replacement of the tree;
  - (b) in the case of a licence to top or lop a registered tree, for securing that the work is properly carried out so as to preserve the tree; and
  - (c) in either case, for securing that the work is properly carried out so as to preserve other trees in the vicinity.
- (4) Before refusing a licence, or granting it subject to conditions, the Department shall —
- (a) [Repealed]<sup>9</sup>
  - (b) consider any written representations made by the applicant;
  - (c) notify the applicant of its intentions and, if he so requests in writing, give him an opportunity of making oral representations to a person appointed by the Department for the purpose; and

- (d) if the applicant makes representations in accordance with paragraph (c), consider the report of the person so appointed.
- (4A) [Repealed]<sup>10</sup>
- (5) If it appears to the Department that the action for which a licence is sought would seriously affect the amenities of the area, then (unless it determines to refuse the licence) it shall publish in one or more newspapers published and circulating in the Island a notice —
- (a) specifying the location of the tree in question and the action for which the licence is sought, and
- (b) stating that written representations with respect to the determination of the application for the licence may be made to the Department before such date as is specified in the notice (not being earlier than 21 days after the notice is published);
- and the Department shall, before granting the licence, consider any representations duly made in accordance with the notice and not withdrawn.
- (6) Where the Department refuses a licence, or grants a licence subject to conditions, it shall notify the applicant in writing of its reasons for doing so.
- (7) A licence —
- (a) shall be in writing;
- (b) shall specify —
- (i) the tree or trees to which it relates,
- (ii) the action thereby permitted, and
- (iii) any conditions subject to which it is granted; and
- (c) shall remain in force for such period (not being less than one year from the date on which it was granted) as may be specified therein.
- (8) A condition subject to which a licence is granted shall remain in force until it is complied with, notwithstanding the expiry of the period specified under subsection (7)(c).
- (9) If any person —
- (a) cuts down, uproots, destroys, tops or lops a tree in pursuance of a licence, and
- (b) fails to comply with a condition subject to which the licence was granted,
- he is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

## 6 Action to prevent damage to tree

- (1) Where it appears to the Department that —
- (a) a person intends to cut down, uproot, destroy, top, lop or damage a tree, and
  - (b) a licence may be required therefor,
- the Department may serve on him a notice in writing prohibiting the cutting down, uprooting, destroying, topping, lopping or damaging of the tree until the notice is withdrawn or the expiration of 14 days beginning with the service of the notice, whichever is the sooner.
- (2) Without prejudice to section 3, if any person on whom a notice under subsection (1) has been served contravenes the notice, or causes or permits another to contravene the notice, he is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.
- (3) Without prejudice to subsections (1) and (2), if it appears to the Department that —
- (a) a person intends to cut down, uproot, destroy, top, lop or damage a tree, and
  - (b) a licence may be required therefor, and
  - (c) action under subsection (1) is unlikely to be effective,
- the Department may apply to the High Court for an injunction restraining him or any other person specified in the application from so doing, and the Court may on the application grant an injunction or make such other order, on such terms, as it thinks just and expedient.

## 7 Replacement of trees

- (1) Where a tree has been cut down, uprooted or destroyed without a licence in circumstances in which a licence is required by section 3, the Department may serve on the occupier of, or any person having an interest in, the land on which the tree stood a notice containing any requirement mentioned in subsection (5).
- (2) Without prejudice to section 3, but subject to section 8, if any person on whom a notice under subsection (1) has been served contravenes the notice, or causes or permits another to contravene the notice, he is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.
- (3) A condition referred to in section 5(3)(a) may impose on every person who from time to time is the occupier of, or has any interest in, the land on which the tree in question stands a requirement mentioned in subsection (5).
- (4) Where —

- (a) such a condition imposes such a requirement in terms that it shall be complied with not less than a specified period before the action permitted by the licence in question is taken, and
  - (b) the action is taken without complying with the requirement,  
the action shall be treated for the purpose of this Act as having been taken without a licence.
- (5) The requirements referred to in subsections (1) and (3) are —
- (a) to carry out such works preparatory to tree-planting as may be specified in the notice or condition;
  - (b) to plant on the land a tree, or such number of trees, of such a species or such a description, and within such time, as may be so specified; and
  - (c) to carry out such works for the protection and care of that tree or those trees, and for such period, as may be so specified.
- (6) The Department may —
- (a) withdraw a notice under subsection (1);
  - (b) waive a requirement imposed under subsection (1) or (3); or
  - (c) extend the period for compliance with any such requirement.

## 8 Appeals

- (1) Any person by whom an application for a licence is made, if he has availed himself of his right to make oral representations under section 5(4)(c), may appeal to the High Bailiff against —
- (a) the refusal of a licence;
  - (b) any condition imposed on the grant of a licence (other than a condition referred to in subsection (3)),  
within 21 days of the notification referred to in section 5(6).
- (2) On an appeal under subsection (1) the High Bailiff may —
- (a) confirm the refusal or condition;
  - (b) in the case of an appeal against the refusal of a licence, grant the licence either unconditionally or subject to conditions permitted by section 5(3) (references in that provision to the Department being taken as references to the High Bailiff);
  - (c) in the case of an appeal against a condition, vary the condition or direct that it shall cease to have effect.
- (3) Sections 58 to 60 (appeals etc.) of the *Local Government Act 1985* apply to a condition imposed under section 5(3)(a) or a notice under section 7(1) as they apply to a notice referred to in the said section 58, subject to the following modifications —
- (a) section 58(7)(a), (8)(a) and (9) does not apply;

- (b) references to a local authority shall be taken as references to the Department;
- (c) references to an owner include references to any person having an interest in the land; and
- (d) in relation to a condition, as if the licence were a notice under the said section 58.

## 9 Rights of entry

- (1) Any person duly authorised in writing by the Department may at any reasonable time enter any land for any of the following purposes —
  - (a) ascertaining whether an offence has been, or is being, committed under this Act;
  - (b) ascertaining whether any notice served or condition imposed under this Act has been complied with;
  - (c) surveying it in connection with any proposal to grant a licence, serve a notice or impose a condition under this Act;
  - (d) where so authorised by section 58(7)(b) of the *Local Government Act 1985* (as applied by section 8), carrying out any works required by any notice served or condition imposed under this Act.
- (2) A person authorised under this section to enter any land —
  - (a) shall, if so required before or after entering on the land, produce evidence of his authority to enter;
  - (b) may take with him on to the land such other persons and such equipment as are necessary for the purpose in question;
  - (c) shall not, if the land is occupied, demand admission to the land as of right unless notice of the intended entry has been served on the occupier not less than 24 hours before the demand;
  - (d) shall, if the land is unoccupied when he enters or the occupier is temporarily absent, leave the land as effectually secured against trespassers as he found it.
- (3) If it is shown to the satisfaction of a justice of the peace that —
  - (a) admission to any land has been refused; or
  - (b) refusal of admission is apprehended; or
  - (c) the land is unoccupied; or
  - (d) the occupier of the land is temporarily absent; or
  - (e) an application for admission would defeat the object of the entry,and there is reasonable ground for entry on the land for a purpose mentioned in subsection (1), the justice may by a warrant authorise a

person authorised by the Department to enter on the land, by force if need be.

- (4) No warrant under subsection (3) shall be made on the ground mentioned in subsection (3)(a) or (b) unless the justice is satisfied that notice of the Department's intention to apply for the warrant has been given to the occupier.
- (5) A warrant under subsection (3) shall continue in force until the purpose for which entry is necessary has been satisfied.
- (6) Section 36 of the *Local Government Act 1985* (offences in connection with entry) applies to entry by virtue of this section as it applies to entry by virtue of section 35 of that Act.

## 10 Offences

- (1) Proceedings for an offence under this Act shall not, without the consent of the Attorney General, be instituted otherwise than by the Department.
- (2) In any such proceedings before a court of summary jurisdiction the Department may appear by any officer authorised by the Department for the purpose.
- (3) Proceedings for an offence under this Act may be brought within a period of 6 months from the date when the offence was discovered by the Department, but no such proceedings shall be brought more than 2 years after the commission of the offence.
- (4) When imposing any penalty for an offence under this Act, the court shall have regard to any benefit accruing as a result of the offence to the person convicted.

## 10A Modification for certain flood risk management functions

- (1) If the Manx Utilities Authority ("the Authority") wishes to perform a function under the *Flood Risk Management Act 2013* relating to land, it is taken as having the interest in the land that will allow it to apply for a licence under section 5 to perform the function.<sup>11</sup>
- (2) However, in performing functions under that Act, the Authority does not require a licence to cut down, uproot, destroy, top, lop or damage a tree (the "activity"), and consequently does not commit an offence under section 3(1) or section 5(9), if –
  - (a) the activity is carried out with the Department's consent; or
  - (b) in an emergency and the Authority informs the Department of the carrying out of the activity as soon as practicable after it happened.
- (3) Reasonable conditions may be imposed on the consent, but it must not be unreasonably withheld or delayed.

- (4) Any question as to the following must be referred to an arbitrator to be agreed between the parties or, failing agreement, appointed by the Governor in Council –
- (a) whether the carrying out of the activity constitutes or will constitute an offence against, or a contravention of, either subsection;
  - (b) whether consent is being unreasonably withheld or delayed; and
  - (c) whether a condition imposed on any consent given is reasonable.<sup>12</sup>

## 11 Interpretation

In this Act –

“**the Department**” means the Department of Environment, Food and Agriculture;<sup>13</sup>

“**licence**” means a licence of the Department required by section 3(1);

“**the planning authority**” means the Department of Infrastructure;<sup>14</sup>

“**the register**” means the register kept under section 2(1);

“**registered tree**” has the meaning given by section 2(2).

## 12 [Repealed]<sup>15</sup>

## 13 Short title etc

- (1) This Act may be cited as the Tree Preservation Act 1993.
- (2) The enactments specified in the Schedule are repealed to the extent specified in column 3 thereof.

**SCHEDULE**  
**ENACTMENTS REPEALED**

Section 13(2)

[Sch repeals the following Act wholly —

Tree Preservation Act 1973

and the following Acts in part —

Town and Country Planning Act 1934

Fines Act 1986

Highways Act 1986

and the following orders in part —

Isle of Man Planning Scheme (Development Plan) Order 1982 (GC140/82)

Department of Agriculture, Fisheries and Forestry Order 1986  
(GC121/86)

Department of Highways, Ports and Properties Order 1986 (GC190/86)

Department of Local Government and the Environment Order 1986  
(GC192/86)

Departments (Miscellaneous Provisions) Order 1986 (GC376/86).]



## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

<sup>1</sup> Para (b) amended by SD155/10 Sch 3.

<sup>2</sup> Subs (1) amended by SD2015/0150.

<sup>3</sup> Subs (1) substituted by Tree Preservation (Amendment) Act 2009 s 1(1).

<sup>4</sup> Subs (2) substituted by Tree Preservation (Amendment) Act 2009 s 1(1).

<sup>5</sup> Subs (2A) inserted by Tree Preservation (Amendment) Act 2009 s 1(1).

<sup>6</sup> Para (d) substituted by Tree Preservation (Amendment) Act 2009 s 1(2).

<sup>7</sup> Subpara (i) amended by SD2015/0150.

<sup>8</sup> Subs (5) substituted by Town and Country Planning Act 1999 Sch 9.

<sup>9</sup> Para (a) repealed by Tree Preservation (Amendment) Act 2009 s 2(a).

<sup>10</sup> Subs (4A) repealed by SD2015/0150.

<sup>11</sup> Subs (1) amended by SD2014/06.

<sup>12</sup> S 10A inserted by Flood Risk Management Act 2013 s 91.

<sup>13</sup> Definition of “the Department” amended by SD155/10 Sch 3.

<sup>14</sup> Definition of “the planning authority” amended by SD155/10 Sch 5.

<sup>15</sup> S 12 repealed by SD2015/0150.