

[C02]/2013



**Command Paper on
a draft Act to provide for the protection and
preservation of trees and for connected purposes**

**Presented to Parliament by
the Minister for Health and the Environment.**

**by Command of Her Majesty
[October 2013]**

1. Draft Bill

2. Draft Explanatory Memorandum

DRAFT

BILL

FOR

AN ACT to provide for the preservation and protection of trees; and for connected purposes.

ENACTED by the Legislature of Gibraltar.

**PART I
PRELIMINARY**

Title and commencement.

1. This Act may be cited as the Environmental Protection (Trees) Act 2013 and comes into operation on the day of publication.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Commission” means the Development and Planning Commission established under section 3 of the Town Planning Act 1999;

“land affected by the Order” means the land on which the tree, group of trees or woodland to which a Tree Preservation Order relates is situated;

“Minister” means the Minister with responsibility for the Environment;

“Tribunal” means the Development Appeals Tribunal appointed under section 24(2) of the Town Planning Act 1999.

Application of this Act.

3.(1) Subject to the provisions of this section, this Act binds the Crown.

(2) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act.

(3) The Government may certify that in the interests of the security of Gibraltar the right of entry under section 19 shall not be exercisable in relation to the premises specified in the certificate.

PART II TREE PRESERVATION ORDERS

Tree Preservation Order.

4.(1) The Commission may make an Order for the preservation of any tree, group of trees or woodland.

(2) An Order made under subsection (1) shall be known as a Tree Preservation Order.

(3) A Tree Preservation Order shall—

- (a) specify the tree, group of trees or woodland to which it relates;
- (b) if the Order relates to a group of trees, specify the number of trees of each species in the group; and
- (c) indicate the position of the tree, group of trees or woodland by reference to a map and its geographical coordinates.

Procedure after making a Tree Preservation Order.

5.(1) Subject to subsection (2), the Commission shall after making a Tree Preservation Order serve a copy of it on the owner and the occupier of the land affected by the Order.

(2) Where the Order relates to a tree, group of trees or woodland situated on land owned by the Government, a copy of the Order shall be served on the relevant government department, agency or authority responsible for that land.

(3) The Commission shall make a copy of the Order available for public inspection at the office of the Town Planner and may also make the Order available by electronic means.

Variation or revocation of a Tree Preservation Order.

6.(1) The Commission may vary or revoke a Tree Preservation Order to such an extent as it considers necessary.

(2) Where the Commission varies or revokes a Tree Preservation Order it shall endorse the original Order with a statement to the effect that the Order has been varied or revoked and specifying the date.

(3) Where the Commission varies a Tree Preservation Order it shall serve—

- (a) a copy of the Order as varied; and
- (b) a statement explaining the effect of the Order as varied,

on the owner and the occupier of the land affected by the Order.

(4) Where the Commission revokes a Tree Preservation Order it shall notify the owner and the occupier of the land affected by the Order that the Order has been revoked.

Notice to remedy dangerous or infested tree.

7.(1) If it appears to the Commission that a tree, group of trees or woodland that is subject to a Tree Preservation Order—

- (a) is infected with any infestation or disease; or
- (b) is in such a condition that it is likely to cause danger to any person or damage to any property,

it may serve a notice on the owner of the land affected by the Order requiring such steps to be taken, as may be specified in the notice, to prevent, cure or control the infestation or disease, or remedy the condition, of the tree, group of trees or woodland.

(2) A notice under subsection (1) shall specify the period, not being less than 28 days from the date of service of the notice, by which the specified steps are required to be taken.

(3) A person who fails to comply with a notice served under subsection (1) commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

Prohibited activity.

8.(1) A person shall not prune, cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree that is subject to a Tree Preservation Order without the written consent of the Commission and, where consent is given subject to conditions, in accordance with those conditions.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

Application for consent in respect of a Tree Preservation Order.

9.(1) An application for consent to prune, cut down, top, lop or uproot a tree that is subject to a Tree Preservation Order shall be made to the Commission.

(2) An application under this section shall—

- (a) be made in writing on a form provided by the Commission for that purpose;
- (b) include the particulars specified in the form;
- (c) be accompanied by—
 - (i) a plan which identifies the tree, group of trees or woodland to which the application relates;
 - (ii) such information as is necessary to specify the work for which consent is sought;
 - (iii) a statement of the applicant's reasons for making the application; and

- (iv) appropriate evidence describing any structural damage to property or in relation to tree health or safety, as applicable.

Determination of applications for consent made under section 9.

10.(1) An application for consent made under section 9 shall be determined by the Commission who may—

- (a) grant consent either unconditionally or subject to conditions;
or
- (b) refuse consent.

(2) Without prejudice to the generality of subsection (1)(a), the conditions subject to which consent may be granted may include conditions with respect to—

- (a) the planting of one or more trees, including conditions about how, where or when planting is to be done;
- (b) conditions requiring things to be done, or installed, for the protection of any trees planted in pursuance of conditions under paragraph (a);
- (c) requiring approvals to be obtained from the Commission;
- (d) specifying the standard to which the works for which consent has been given must be carried out;
- (e) limiting the duration of consent.

(3) The Commission shall notify the applicant of its decision by notice in writing.

(4) Where consent is granted under subsection (1)(a) it shall be valid for a period of two years beginning with the date of its grant.

(5) A grant of consent under subsection (1)(a) shall (except so far as the consent otherwise provides) enure for the benefit of the land to which the

Tree Preservation Order relates and of all persons for the time being interested in it.

Register.

11.(1) The Commission shall maintain a register containing the following information—

- (a) the Tree Preservation Orders made by the Commission;
 - (b) details of any application for consent made under section 9; and
 - (c) where a decision has been taken with respect to an application, the Commission's decision in relation to the application, including any conditions subject to which consent has been granted.
- (2) The register maintained under this section shall be available for inspection by the public at all reasonable hours and may also be made available electronically.

**PART III
TREES NOT SUBJECT TO PART II**

Application of Part III.

12. This Part applies to a tree that is not the subject of a Tree Preservation Order under Part II.

Prohibition.

13.(1) A person shall not cut down or uproot a tree to which this Part applies unless that person has—

- (a) the written consent of the Commission and, where consent is given subject to conditions, in accordance with those conditions; or
- (b) applied for consent under section 14 and has not received notice—

- (i) of the Commission's decision; or
- (ii) that his application is being considered,

within 28 days beginning with the day the application for consent is received by the Commission.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

Application for consent under Part III.

14.(1) An application for consent to cut down or uproot a tree to which this Part applies shall be made to the Commission.

- (2) An application under this section shall—
 - (a) be made in writing on a form provided by the Commission for that purpose;
 - (b) include the particulars specified in the form;
 - (c) be accompanied by—
 - (i) a plan which identifies the tree to which the application relates;
 - (ii) such information as is necessary to specify the work for which consent is sought;
 - (iii) a statement of the applicant's reasons for making the application; and
 - (iv) appropriate evidence describing any structural damage to property or in relation to tree health or safety, as applicable.

Determination of applications for consent under section 14.

15.(1) An application for consent made under section 14 shall be determined by the Commission who may–

- (a) grant consent either unconditionally or subject to conditions;
or
- (b) refuse consent.

(2) Without prejudice to the generality of subsection (1)(a), the conditions subject to which consent may be granted may include conditions with respect to–

- (a) the planting of one or more trees, including conditions about how, where or when planting is to be done;
- (b) limiting the duration of the consent.

(3) The Commission shall notify the applicant of its decision by notice in writing.

(4) Where consent is granted under subsection (1)(a) it shall be valid for a period of one year beginning with the date of its grant.

(5) A grant of consent under subsection (1)(a) shall (except so far as the consent otherwise provides) enure for the benefit of the land to which the consent relates and of all persons for the time being interested in it.

**Part IV
EXCEPTIONS, ETC**

16.(1) Sections 8 and 13 shall not apply–

- (a) to the cutting down, topping, lopping or uprooting of a tree–
 - (i) whose diameter does not exceed 75 millimetres;
 - (ii) which is dead;
 - (iii) where that work is urgently necessary to remove an immediate risk of serious harm;

- (iv) where that work is urgently necessary for security purposes;
 - (v) so far as work is necessary to implement full planning permission granted under the Town Planning Act 1999;
 - (b) to the removal of dead branches from a dead tree;
 - (c) to the cutting down or lopping of a tree in compliance with a notice served under–
 - (i) section 255 of the Public Health Act; or
 - (ii) paragraph 5 of Schedule 3 to the Gibraltar Electricity Authority Act 2003;
 - (d) to the cutting down of a tree in accordance with a permit issued under section 49 of the Gibraltar Heritage Trust Act 1989;
 - (e) to the cutting down or uprooting of a tree in compliance with any notice or permission issued by or under, or any obligation imposed by, any other legislation;
 - (f) in circumstances where section 359 of the Crimes Act 2011 applies; or
 - (g) to the cutting down, topping, lopping or uprooting of a tree, group of trees or woodland situated on the land specified in the Schedule and carried out in accordance with the written authorisation of the Government.
- (2) Where subparagraph (ii) or (iii) of subsection (1)(a) applies, notice in writing shall be given to the Commission–
- (a) in the case of works urgently necessary to remove an immediate risk of serious harm, as soon as practicable after the works become necessary;

- (b) in any other case at least five working days prior to the date on which the works are to be commenced.

(3) The notice referred to in subsection (2)(a) shall be accompanied by appropriate evidence in order to prove, to the satisfaction of the Commission, that the works were urgently necessary to remove an immediate risk of serious harm.

(4) For the purpose of subsection (1)(a)(i)–

- (a) where a tree has more than one stem at a point 1.5 metres above the natural ground level its diameter shall be treated as exceeding 75 millimetres if any stem when measured over its bark at that point exceeds 75 millimetres; and
- (b) in any other case, the diameter of a tree shall be ascertained by measurement over the bark of the tree at a point 1.5 metres above the natural ground level.

Replacement of trees.

17.(1) If any tree is cut down or uprooted–

- (a) in contravention of section 8 or 13; or
- (b) in any case where subparagraph (ii) or (iii) of section 16(1)(a) applies,

the Commission may serve a notice on the owner of the land to plant one or more trees of an appropriate size and species within such period as may be specified in the notice.

(2) For the purposes of subsection (1), the Commission may require the owner of the land to plant one or more trees–

- (a) at the same place, or on or near the land, on which the tree cut down or uprooted stood; or
- (b) on such other land and in such places as may be agreed between the Commission and the owner of the land.

(3) A person who fails to comply with a notice served under subsection (1) commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

Appeals.

18.(1) Where the Commission refuses an application for consent made under section 9 or 14, or grants it subject to conditions, the applicant may by notice in writing appeal to the Tribunal within 28 days of the date the applicant is notified of the Commission's decision.

(2) A person who has made an application under section 9 or 14 may also appeal to the Tribunal if the Commission have not notified that person of the Commission's decision at the end of the period of 8 weeks beginning with the date on which application was received by the Commission.

(3) Where subsection (2) applies, for the purposes of this section the application shall be treated as if—

- (a) it had been refused by the Commission; and
- (b) notification of the Commission's decision had been received by the applicant at the end of the period of 8 weeks beginning with the date the application was received by the Commission.

(4) Where the Commission make a Tree Preservation Order under section 4, the owner or occupier of the land affected by the Order may appeal to the Tribunal against the Order.

(5) Where the Commission has served a notice under section 7, the owner of the land to which the notice relates may appeal to the Tribunal against the notice before the end of the period specified in accordance with section 7(2).

(6) An appeal under this section shall—

- (a) be made in the form provided by the Commission; and
- (b) state clearly and precisely the full reasons for the appeal.

(7) On an appeal to the Tribunal made under subsection (1) or (2), the Tribunal may—

- (a) confirm or vary the decision of the Commission in whole or in part;
 - (b) where consent has been refused by the Commission, direct that consent be granted subject to such conditions, if any, as the Tribunal may specify; or
 - (c) direct that any condition subject to which consent has been granted by the Commission be deleted, modified or replaced by such conditions as the Tribunal may specify.
- (8) On an appeal to the Tribunal made under subsection (4), the Tribunal may–
- (a) confirm the decision of the Commission to make a Tree Preservation Order; or
 - (b) vary or revoke the Tree Preservation Order.
- (9) On an appeal to the Tribunal made under subsection (5), the Tribunal may–
- (a) confirm or vary the requirements of the notice; or
 - (b) revoke the notice.
- (10) On an appeal under this section, the Tribunal shall, if either the appellant or the Commission so desire, give each an opportunity of appearing before and being heard by the Tribunal.
- (11) The decision of the Tribunal on any appeal shall be final, and it shall be the duty of the Commission and the appellant to comply with any directions of the Tribunal given in respect of the appeal.

Right to enter any land.

19.(1) A person duly authorised in writing by the Commission may enter any land for the purpose of–

- (a) surveying it in connection with making, varying or revoking a Tree Preservation Order, including making an assessment of a tree, group of trees or woodland;
- (b) ascertaining whether an offence under section 8 or 13 has been committed; or
- (c) determining whether a notice under section 7 or 17 should be served.

(2) Any right to enter by virtue of this section shall be exercised after giving at least three days notice in writing to the owner and the occupier of the relevant land.

(3) A person who wilfully obstructs a person acting in the exercise of a right of entry under this section commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

Electronic communications.

20.(1) An application, notice or other document that is required or permitted to be made or given under this Act to the Commission or the Tribunal may be made or given by electronic communication in the form approved by the Commission.

(2) Where an application is made under this Act by electronic communication,—

- (a) any communication between the Commission and the applicant; or
- (b) any notice or other document required or permitted to be given by the Commission to the applicant,

may be made or given by electronic communication and the applicant shall be taken to have agreed to the use of such communication for the purposes of that application.

(3) Where an appeal is made under this Act by electronic communication,—

- (a) any communication between the Tribunal and the applicant; or

- (b) any notice or other document required or permitted to be given by the Tribunal to the appellant,

may be made or given by electronic communication and the appellant shall be taken to have agreed to the use of such communication for the purposes of that appeal.

(4) Any application, notice, or other document made or submitted by electronic communication must be—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(5) In relation to the use of electronic communications for any purpose which in accordance with this section is capable of being carried out electronically any references in this Act to a map, plan, drawing or any other document includes a reference to such document, or a copy of it, in electronic form.

(6) In this section, “electronic communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa)—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form.

Power to make Regulations.

21. The Minister may make such Regulations as may be necessary for carrying out the purposes of this Act and in particular—

- (a) the form and manner of making an application under this Act and the information required to be submitted in connection with the application;

- (b) for the purpose of further authorising or facilitating the use of electronic communications or electronic storage for anything required to be done, or which may be done, under this Act;
- (c) the procedure to be followed in the making and consideration of the application;
- (d) prescribing fees to be paid on making such an application;
- (e) for regulating appeals under section 18;
- (f) exempting any tree, group of trees, woodland, or any area of Gibraltar, from the application of this Act.

Amendment of Schedule.

22. The Minister may by Order amend or vary the Schedule.

Governor's constitutional responsibilities.

23.(1) Nothing in this Act or in any regulations made under this Act shall derogate from the responsibility of the Governor under the Constitution for defence, internal security or any other matter for which the Governor may have responsibility under the Constitution.

(2) The Government shall consult the Governor in relation to any matter for which the Governor has responsibility under the Constitution.

Amendment of the Town Planning Act 1999.

24. The Town Planning Act 1999 is amended by repealing section 38.

Transitional provision.

25. A Tree Preservation Order made under section 38 of the Town Planning Act 1999 shall have effect as if it was made under this Act.

Draft

THE SCHEDULE

Section 16(1)(g)

1. The area designated as a nature conservation area under section 18(1) of the Nature Protection Act 1991.
 2. The public gardens known as the Alameda Gardens.
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EXPLANATORY MEMORANDUM

This Bill makes provision for the protection and preservation of trees. Part II provides for Tree Preservation Orders and replaces section 38 of the Town Planning Act 1999. This Part prohibits the carrying out of any work to a tree that is the subject of an Order without the consent of the Development and Planning Commission, which may be given subject to conditions. Part III applies to any tree that is not the subject of a Tree Preservation Order. This Part prohibits the cutting down or uprooting of such a tree without the permission of the Development and Planning Commission, which may also be given subject to conditions. Part IV sets out various exceptions to the prohibition as well as providing for the replacement of trees and appeals.