

Proposed Tree Protection Bill

Draft Response from Ards and North Down Borough Council July 2026 re Commentary on Clauses associated with the proposed Bill

Para	Text	Comment
9	In GB it is an offence to ‘cause or permit’ a breach of a TPO The wording utilised in the GB tree regs is ‘no person.....or shall cause or permit the carrying out of the activities..’	Difficult to determine if actions have the potential to destroy a tree – as many actions may only become apparent in effect many years later
10	NIPSO Report ‘Strengthening Our Roots’ – reports 369 tree protection breaches reported to councils over a three-year period with only one resulting in formal enforcement action	The actual factual information is that out of 369 allegations of breaches , 170 related to planning conditions, 144 related to alleged breaches of TPOs and 29 related to alleged breaches of CA protections. No breach was found in 52% of cases (i.e. 191 cases). The Report also highlights that whilst only one council took formal enforcement action, there could not be determinative findings regards approaches without further work, which was not undertaken
11	The omission of the above phrase in the Planning Act causes uncertainty as to the likelihood of a successful conviction when a TPO has been breached	
13	Another policy objective of the Bill is to require landowners or those felling protected trees to replant; alongside Council officers to inspect and confirm replacement planting has occurred, and the trees are of the appropriate condition and are maintained	

Existing Section	Proposal	Comments
Clause 1 – Tree preservation orders; councils		
122 allows council to make a TPO where it appears expedient in the interests of amenity	This clause extends the grounds for making a TPO where it appears expedient in the interests of amenity or ‘eco-system services’	What level of ecosystem will be considered necessary – concern regards having to impose a TPO on any tree, as surely any tree supports an ecosystem of one extent or another
122(1)(a)	Clause 1 extends the scope of a TPO to prohibit persons from ‘knowingly causing or permitting’ any of the existing prohibited acts	How can this be determined by councils? This needs addressed by legal advice to understand how a Council can prove this in a Court of law
N/A – proposed addition of (1A) to (1D)	If Council believes a tree to be ‘ancient’ it may commission an assessment by an arboriculturist, and if confirmed as so, the council must impose a TPO, unless the tree is dead The condition, health or structural integrity of that tree is not to be considered a ground for refusing to make an order	Expense to council Why shouldn’t requestor pay for survey? Who then is liable for any health and safety issue associated with the tree?
Clause 2 – Provisional tree preservation orders		
	Proposed amendment to make a pTPO confirmed after six months where no representations received and council has not issued a decision to revoke	Considered completely unnecessary – current process ensures trees are protected whilst being considered, and the council will confirm with/without modifications or decide not to proceed based on health and conditions survey. This proposal does not take account of any modifications required. Consider that this clause has ZERO added value. The Council is not

		normally dealing with only one request for a TPO at any time, and has to engage the services of an arboriculturist to carry out a health and condition survey of the trees proposed for protection. This often necessitates the full six months, in order to attain these services alongside the arboriculturist carrying out surveys on other sites requested for protection, or in connection with applications for works to protected trees. Demonstrates a complete misunderstanding of the process involved.
Clause 3 – Penalties for contravention of tree preservation orders		
	Now includes ‘knowingly causes or permits a tree to be cut down, uprooted or wilfully destroyed, or wilfully damaged, topped or lopped in such a manner to be likely to destroy it’	How will council determine this?
Clause 4 – Replacement of trees		
125 requires planting of replacement tree of appropriate size/species where a tree is removed, uprooted or destroyed in contravention of a TPO	Replacement tree must be a ‘heavy standard tree of an appropriate species’. The owner of the land is required to inform the council when a replacement tree has been planted	How does council determine when this has occurred – and is ‘heavy standard’ the appropriate replacement – as in some cases, the tree that has been removed was not appropriate for the space it was growing within?
	New addition to provide that if a replacement tree becomes damaged/diseased or is removed within 5 years of planting, the owner must plant a subsequent replacement. And by virtue of other additions, the person who was responsible for the breach must replant. The tree must be planted within 18 months of being notified to do so – the	Huge resource commitment on the council to monitor this, firstly in respect of the 18 month limit for planting, then each year up to five years, and repeating for each tree as replaced. Not considered feasible. What if a person moves house or dies?

	owner can recover reasonable costs from the person responsible for the breach if the person responsible has not carried out the planting	Presents huge onus on owner to deal with contravener to plant or to take to court to recover costs
Clause 5 – Council to inspect replacement trees		
N/A – new section proposed	Duty placed on council to monitor replacement trees – for five years from date of planting – to carry out an annual inspection, with a view to Identifying any tree needing additional care or replacement; Informing the owner of actions required to ensure the tree becomes established	Massive resource requirement on councils Will inevitably require arboriculturist support to identify ‘additional care/replacement’ as will differ for individual species.
	Where remedial action is required, council must inform both the owner of the land, and (if known) the person responsible for the breach of the remedial action required	Refer to use of wording ‘(if known)’ as this is basis for the extension of the legislation to cover people responsible. How long after someone has breached is council to continue to try and identify??
Clause 6 – Enforcement of duties as to replacement of trees		
164 with proposed addition of sub sections	Where a person fails to comply with an enforcement notice, the council may enter the land, carry out the planting, and recover costs of doing so from the person who committed the breach. Where that person cannot be identified, is insolvent, or cannot be found, the council may recover the cost from the owner of the land – who then has right to try and recover costs from the person responsible in first instance	Resource implication for council to procure the tree(s) and gain entry and replant. If the tree(s) doesn’t take is the council responsible or the owner? Considered impractical and totally unreasonable to owner if not responsible, or had no prior knowledge of the contravention.

Clause 7 –Tree Protection Map		
N/A – proposes new sections	Requires DFI to make available online, free of charge, digital map showing all TPOs in effect across NI, and boundaries of conservation areas, as well as number of TPO requests received, approved and rejected by each council. Each council required to update this system	This seeks to revert to a unitary planning system, whereas this council already hosts an interactive map with this detail and reports to Planning Committee on a quarterly basis as to all requests for new TPOs/CA notifications and applications for consent to carry out works Considered inappropriate when the Council, as its own planning authority, already carries out this work
Clause 8 – Determination of planning applications		
45 – seeks to add to	Planning permission to be refused where the grant of planning permission would result in a) The loss or deterioration of ancient or long-established woodland; b) Development within 15m of ancient or long-established woodland; or c) Deterioration of an ancient tree which is subject to a TPO, unless the applicant demonstrates that there are “wholly exceptional circumstances” justifying grant of permission	This is considered too prescriptive to be included in legislation. Councils should rather include in policy and apply accordingly and be prescriptive in Validation Checklists/Policy or SPG as to requirements How is deterioration to be determined, and over what timeline?
Clause 9 – Permitted Development		
Article 3 of GPDO	PD rights not to apply to any development which requires or involves a) The loss or deterioration of ancient or long-established woodland;	How is an owner to determine if their site contains this type of woodland, if not protected?

	b) development within 15m of ancient or long-established woodland	
Clause 10 – Ecosystem services		
	Sets out the ecosystem services that may justify the making of a TPO. A new Schedule 1A lists three categories, namely cultural services, regulating services, and supporting services, and specifies examples of what these categories include. 1.—(1) The following services are ecosystem services for the purposes of section 122. (2) Cultural Services, including— (a) Recreation and tourism; (b) Sense of place; and (c) Health benefits. (3) Regulating services, including— (a) Climate regulation; (b) Flood regulation; (c) Fire hazard regulation; (d) Air and water quality regulation; (e) Erosion control; (f) Disease and pest control; (g) Soil quality regulation; and (h) Noise regulation. (4) Supporting services, including— (a) Primary production; (b) Soil formation; (c) Water cycling; and (d) Nutrient cycling.”.	It is considered that any member of the public could make this argument about any single tree. How is council to determine the extent to which a tree complies or otherwise? A refusal to serve a TPO based on council’s consideration will subject the councils to further criticism and correspondence/complaints. The word ‘including’ means there are other potential ‘services’ falling under this ecosystem phrase – how is council to consider? Given trees are known for their absorption of CO2, then every request for a TPO will be claimed to be under ‘air quality’ regulation. There is no accompanying explanation as to how these categories have been considered appropriate.