

Consultation Response – Tree Protection Bill

The Committee for Infrastructure is currently seeking views on the proposed Tree Protection Bill.

The key policy areas addressed by the Bill, together with the associated consultation questions and suggested responses, are set out below.

As part of the consultation process, the Council is required to provide a response to each clause of the Bill, indicating whether it **agrees (Yes)**, **disagrees (No)**, or is **Unsure** in respect of the provisions contained within each clause.

Clause 1 - Tree preservation orders: councils

Clause 1 broadens the rules for tree preservation orders (TPOs) under the Planning Act (Northern Ireland) 2011 by allowing councils to make orders not only for amenity reasons but also for ecosystem services, meaning the benefits ecosystems provide to human well-being. It also strengthens TPO protections by making it an offence to knowingly permit any prohibited act, such as cutting, damaging, or destroying a tree. A new set of subsections creates special protection for ancient trees: councils may designate them without needing to meet amenity or ecosystem tests, must commission an arboriculturist's assessment when their status is uncertain, and must issue a TPO if the tree is confirmed as ancient unless it is dead. If a council chooses not to commission an assessment, it must give written reasons. Finally, Clause 1 changes when a TPO takes effect, allowing it to become operative either on confirmation by the council or automatically when deemed confirmed under section 123 of the 2011 Act.

1. Do you agree with Clause 1 of the Bill?

Unsure

2. Please provide information to support your answer here:

The Council supports the recognition of ecosystem services as an additional consideration when assessing trees for Tree Preservation Orders (TPOs). Ecosystem services such as air purification, carbon sequestration, biodiversity enhancement, and flood mitigation are valuable benefits provided by trees and can contribute significantly to wider environmental and sustainability objectives.

While TPOs have traditionally been based on factors such as amenity value and public visibility, incorporating ecosystem services into the assessment process could strengthen environmental protection and better align TPO designations with climate change and biodiversity priorities.

However, clear criteria and guidance would be required to ensure a consistent and proportionate approach to implementation. A particular concern is the threshold that would be applied when assessing ecosystem service value. All trees provide ecosystem benefits to some extent, and it is therefore unclear what level of

contribution would be considered sufficient to justify a TPO. Without a clearly defined threshold, there is a risk that a significant number of trees could potentially meet the criteria, creating uncertainty around when a TPO should be applied. The value of the TPO designation could also be diminished, if the threshold is set too low.

If the threshold is set to low, then it may create delays and barriers within the planning system, which adversely impact delivery of projects and investment in Northern Ireland.

The Council considers that, if ecosystem services are to be introduced as a basis for TPO designation, a clear threshold is required to ensure that protection is targeted towards trees of environmental significance rather than applying to all trees that provide general ecosystem benefits.

Ecosystems test - The mere fact that a tree contributes to the environment or provides ecosystem services should not, in itself, be sufficient to justify a TPO. There must be clear evidence that the tree makes a significant contribution to biodiversity, habitats or species in the area, or to climate change mitigation and resilience, and that its loss would result in a significant adverse impact.

The introduction of ecosystem service assessments would also place additional demands on Council resources and may require specialist input from DAERA, NIEA, or other relevant bodies to support decision-making.

Adequate funding, technical guidance, and assessment methodologies would therefore be necessary to ensure effective and consistent implementation across all councils

Clause 2 - Provisional tree preservation orders

Clause 2 updates section 123 of the 2011 Act by changing how provisional tree preservation orders (TPOs) become confirmed. While provisional TPOs still take effect immediately and normally lapse after six months unless formally confirmed, the amendment provides that they will now be deemed confirmed at the six-month point if the council has received no objections or representations and has not issued a decision to revoke the order. This effectively streamlines confirmation where there is no opposition, ensuring smoother protection for affected trees.

3. Do you agree with Clause 2 of the Bill?

No

4. Please provide information to support your answer here:

The Council has concerns regarding the automatic confirmation of provisional TPOs after six months. In some cases, a TPO may be made urgently before full surveys or supporting assessments have been completed. Depending on the complexity of the case, obtaining all necessary information and documentation may take longer than

six months. Automatic confirmation could therefore result in orders being confirmed before all relevant evidence has been fully considered.

Clause 3 - Penalties for contravention of tree preservation orders

Clause 3 strengthens section 126 of the 2011 Act by expanding the range of conduct that constitutes an offence. While the law already makes it illegal to cut down, uproot, damage, destroy, top, or lop a tree in breach of a tree preservation order (TPO), the amendment adds that anyone who knowingly causes or permits any of these prohibited acts is also guilty of an offence. This mirrors the broader protective approach introduced in Clause 1 and ensures accountability not only for direct actions but also for deliberate facilitation or allowance of TPO violations.

5. Do you agree with Clause 3 of the Bill?

Yes

6. Please provide information to support your answer here:

This amendment would help ensure that responsibility extends beyond the individual who directly carries out the offence. Landowners, contractors and others involved in managing land should be held accountable where they knowingly cause or permit damage to protected trees.

Clause 4 - Replacement of trees

Clause 4 strengthens section 125 of the 2011 Act by tightening requirements for replacing trees removed or damaged in breach of a TPO. It would mandate that any replacement must be a heavy standard tree of an appropriate species, and landowners must notify the council once it is planted. If that replacement dies, is damaged, diseased, or removed within five years, it must be replaced again. New rules also shift responsibility: where someone other than the landowner caused the TPO breach, that person must carry out the replacement duties, though the owner may step in if they fail to act within 18 months and can recover reasonable costs.

7. Do you agree with Clause 4 of the Bill?

Yes

8. Please provide information to support your answer here:

Where a protected tree has been removed, an appropriate replacement should be provided in accordance with the legislation. However, account must also be taken of the surrounding environment to ensure the replacement tree is suitable for the location and does not adversely impact buildings, infrastructure or public safety.

Clause 5 - Council to inspect replacement trees

Clause 5 introduces section 125A, creating a new duty for councils to actively monitor trees planted as replacements under section 125. For five years after

planting, councils must carry out annual inspections—either through site visits or by reviewing evidence provided by the landowner—to identify trees needing extra care or further replacement and to inform the landowner of required actions. When remedial work is needed, the council must notify both the landowner and, where known, the person responsible for the original TPO breach. That person is required to carry out the remedial action unless the landowner chooses to do so; if they fail to act within the specified period, the landowner must complete the work and may recover reasonable costs from the person responsible for the breach.

9. Do you agree with Clause 5 of the Bill?

unsure

10. Please provide information to support your answer here:

The Council is concerned about the implications of this proposal. Carrying out annual inspections over a five-year period would place a significant additional burden on council resources and staffing. Provision of appropriate and sufficient funding and operational capacity are essential to deliver this responsibility effectively.

Clause 6 - Enforcement of duties as to replacement of trees

Clause 6 updates section 164 of the 2011 Act by strengthening how councils enforce tree-replacement duties. It first aligns enforcement notices with earlier reforms by requiring that any ordered replacement must be a heavy standard tree, matching the standard introduced in Clause 4. It then adds new powers allowing councils to enter land and plant the required tree themselves if the person responsible for the TPO breach fails to comply, with the council able to recover costs from that person. If the responsible individual cannot be identified, is insolvent or cannot be found, the council may recover costs from the landowner, who in turn retains a right to reclaim those costs from the person who committed the breach.

11. Do you agree with Clause 6 of the Bill?

Unsure

12. Please provide information to support your answer here:

The Council has concerns significant concerns in relation to the additional resource implications of enforcing these duties. Legal enforcement action can be complex, time-consuming and costly, particularly where responsible parties are difficult to identify, locate or pursue. Consideration should be given to the practicality and cost-effectiveness of these enforcement powers.

Clause 7 - Tree Protection Map

Clause 7 adds new sections 128A–128D to the 2011 Act, creating a digital, publicly accessible system for tree-preservation information across Northern Ireland. Section 128A requires the Department to provide an online map showing all active TPOs, conservation-area boundaries, and council-level statistics on TPO

applications. Section 128B places duties on councils to upload their existing records within an initial upload period and then update the map at least every three months. Section 128C allows the Department to make regulations governing how Tree Protection Map information is made available and clarifies that, aside from personal-data protections, processing this information does not breach confidentiality. Section 128D reinforces that none of these duties permit processing personal data in violation of data-protection legislation.

13. Do you agree with Clause 7 of the Bill?

Unsure

14. Please provide information to support your answer here:

A publicly accessible map could improve awareness of TPO designations and provide greater transparency for landowners, developers and the wider public. However, many councils already provide interactive mapping systems that identify protected trees and planning constraints. The Council therefore questions whether a new statutory mapping requirement would deliver significant additional benefits or whether it may duplicate existing resources and create unnecessary administrative and maintenance costs. Consideration should be given to building upon existing mapping platforms rather than introducing a separate requirement.

Clause 8 - Determination of planning applications

Clause 8 adds a new section 45(1A) to the 2011 Act, requiring councils to refuse planning permission where a proposed development would cause the loss or deterioration of ancient or long-established woodland, involve building within 15 metres of such woodland, or harm an ancient tree protected by a TPO, unless the applicant can demonstrate wholly exceptional circumstances. This creates a strong presumption against development that threatens Northern Ireland's most ecologically significant trees and woodlands.

15. Do you agree with Clause 8 of the Bill?

Yes

16. Please provide information to support your answer here

Whilst ancient and long-established woodland represents only a small proportion of Northern Ireland's landscape, these habitats are irreplaceable once lost. Their protection should therefore be a priority. Allowing development that would adversely impact these sites risks permanent damage to ecosystems that have taken centuries to establish.

Recognising ancient woodland and ancient trees as assets of comparable importance to ASSIs would strengthen their protection. Effective legal safeguards, monitoring and planning controls are essential to ensure their ecological, historical and cultural value is preserved for future generations.

The exceptional test ensures that flexibility remains to facilitate certain development.

Clause 9 - Permitted Development

Clause 9 tightens permitted development rules under the Planning (General Permitted Development) Order (Northern Ireland) 2015 by removing automatic permission for any development that would harm ancient or long-established woodland. A new paragraph (5A) in Article 3 makes clear that permitted development rights no longer apply where a project would cause the loss or deterioration of such woodland or involve development within 15 metres of it.

17. Do you agree with Clause 9 of the Bill?

unsure

18. Please provide information to support your answer here

The Council agrees that permitted development rights should not apply to sites containing ancient woodland, long-established woodland, protected trees or heritage trees, as these are irreplaceable natural assets that warrant a high level of protection.

However, clarification is required on how landowners will determine whether their site contains ancient or long-established woodland, particularly where no formal designation, protection, or publicly accessible mapping exists. Clear guidance and accessible records would be necessary to ensure landowners can readily identify such features and understand any associated planning restrictions.

Clause 10 - Ecosystem services

Clause 10 introduces a new Schedule 1A that defines the ecosystem services which can justify issuing a TPO. The Schedule groups these services into three categories—cultural, regulating, and supporting—and provides examples of the types of benefits each category covers. This gives councils a clearer, more structured basis for protecting trees on ecological and societal grounds beyond traditional amenity considerations.

19. Do you agree with Clause 10 of the Bill?

No

20. Please provide information to support your answer here

The Council is concerned that the ecosystem services criterion may be open to broad interpretation. In practice, it could be argued that almost any tree provides ecosystem services to some degree, whether through carbon sequestration, air quality improvement, biodiversity support, or other environmental benefits.

It is unclear how councils would objectively assess the extent to which a tree contributes to ecosystem services, or what threshold would need to be met to justify the making of a TPO. The use of the word "including" suggests that additional ecosystem services beyond those specifically listed may also be relevant, creating further uncertainty regarding the scope of assessment.

Without clear and measurable criteria, there is a risk that ecosystem services could be cited in support of virtually every TPO request. For example, as trees are widely recognised for their role in absorbing carbon dioxide and improving air quality, it could be argued that any tree warrants protection on these grounds. This will place significant additional demands on council finances and staff resources.

Clause 11 - Interpretation: 2011 Act

Clause 11 adds several new definitions to section 250(1) of the 2011 Act: an "ancient tree" is defined using criteria set by the Ancient Tree Forum and Woodland Trust (or similar bodies, or as prescribed by regulations); "ancient woodland" refers to land continuously wooded since at least 1600 AD, including both semi-natural woodland and planted sites on ancient woodland; a "heavy standard tree" meets the specification in British Standard 8545:2014 (or any successor or prescribed standard); and "long-established woodland" means land continuously wooded since the 1830–1844 Ordnance Survey maps but without evidence of woodland cover before 1600.

21. Do you agree with Clause 11 of the Bill?
Yes

22. Please provide information to support your answer here

This provides clarity and consistency for all stakeholders involved in the planning and decision-making process.

Clause 12 - Interpretation: 2015 Order

Clause 12 adds definitions of "ancient woodland" and "long-established woodland" to Article 2 of the 2015 Order, using the same wording and meaning as those introduced into the 2011 Act by clause 11.

23. Do you agree with Clause 12 of the Bill?
Yes

24. Please provide information to support your answer here

This provides clarity and consistency for all stakeholders involved in the planning and decision-making process.

Clause 13 - Interpretation: general

Clause 13 sets out general interpretation provisions for the Act, defining the “2011 Act” as the Planning Act (Northern Ireland) 2011 and the “2015 Order” as the Planning (General Permitted Development) Order (Northern Ireland) 2015, and clarifying that references to Parts, numbered sections, and Schedules refer to the 2011 Act unless otherwise specified.

25. Do you agree with Clause 13 of the Bill?

Yes

26. Please provide information to support your answer here

This provides clarity and consistency for all stakeholders involved in the planning and decision-making process.

Clause 14 - Commencement

Clause 14 provides that the Act comes into operation twelve months after the day on which it receives Royal Assent.

27. Do you agree with Clause 14 of the Bill?

No

28. Please provide information to support your answer here

A twelve-month implementation period would provide councils and other stakeholders with sufficient time to prepare for the new requirements, develop procedures where necessary and ensure a consistent approach to implementation.

However, it is essential that appropriate and sufficient funding and resourcing levels are agreed with and provided to Councils to exercise these legislative powers prior to the legislation coming into operation.