

Section 2

Consolidating the tree preservation order system

Background

- 2.1 All existing TPOs contain a schedule of protected trees, listed in their specific categories (individual, group, area, woodland) and a map showing their location. Each TPO also contains provisions which apply to that order e.g. appeal and compensation rights, exceptions from the need to obtain consent for work and processes for varying or revoking consents. Over the years the model form of TPO has developed into a long and complex document, running to a dozen pages of legal small print.
- 2.2 Each TPO is based on the wording of the model order applicable at the time the TPO was made, so the rules governing trees protected in, say 1971, are not the same as the rules governing trees protected in 2001. As a result there has been a lack of consistency across TPOs, which has required a local planning authority ("the authority") to check each order when considering certain administrative tasks.
- 2.3 This lack of consistency has resulted in different rights and expectations for tree owners and other applicants. For example, the changes made to the model order by the 1999 Regulations changed the compensation regime for all TPOs made on or after 2 August 1999.
- 2.4 In order to overcome these problems there is a need to bring all the provisions together to restore the safeguards, particularly for tree owners and applicants.

Proposals

Remove the inconsistencies from all TPOs

- 2.5 The first step is to bring all existing TPOs onto the same footing in order to remove the current complex and inefficient system, where each protected tree is governed by the rules and procedures set out in its own particular documentation.
- 2.6 We propose that all existing TPOs would automatically be amended so as to remove the inconsistencies that exist in their provisions. This would not require authorities to make changes to individual TPOs. The content of every order would be cancelled except those items that identify the

trees that it protects i.e. the schedule listing the trees in their respective categories and the map showing their location.⁵

2.7 At the same time we propose to introduce a new model order which would follow the resulting slimmed-down format.⁶ This would be a short, simple document of no more than a couple of pages - one that is easy for authorities to administer and easy for all to understand.

2.8 This would result in the content of every TPO containing only the details of the trees that are protected. Authorities would continue to provide recipients with information explaining the implications of the TPO e.g. CLG's leaflet *Protected trees: a guide to tree preservation procedures*.⁷

New regulations

2.9 At the same time, we propose that new regulations (see Annex A) would come into force and replace provisions that are to be removed from existing TPOs. The 1999 and 2008 Regulations would be cancelled and their provisions would also be transferred to the new regulations. Lastly certain provisions would be included from the Town and Country Planning Act 1990, where their content complements the provisions being transferred from the TPOs and the 1999 and 2008 Regulations (see 1.7).

2.10 As a result the new regulations would contain the key provisions, including a new model order, simplifying the process for authorities when making, administering and enforcing TPOs, as well as providing tree owners with more clarity on the requirements arising from a TPO.

2.11 When the new regulations commence, all new TPOs would be made using the new model order. The regulations would create one system that would apply to every TPO, existing or proposed.

Question 1: Will the proposal to consolidate legislation and introduce one system for TPOs benefit tree owners and authorities?

If not, what changes are needed?

Question 2: Will bringing all existing and future TPOs into the same shorter format be clearer for tree owners and help local planning authorities?

If not, what changes are needed?

⁵ See section 193 of the Planning Act 2008.

⁶ See draft Regulations in Annex A.

⁷ www.communities.gov.uk/publications/planningandbuilding/protectedtreesguide

Section 3

Streamlining the system

- 3.1 Bringing together into one document the relevant content from the Town and Country Planning Act 1990, the 1999 and 2008 Regulations and various model forms of TPO provides the opportunity to resolve inconsistencies in the existing provisions and produce a more streamlined and fairer system. The following proposed changes to existing provisions are included in the draft regulations.

Immediate protection from a TPO

Background

- 3.2 The current position is that a TPO comes into force once the authority has considered all objections, made any required variations and confirmed the order.
- 3.3 Where it appears to the authority that there is a need for the TPO to come into force immediately they can include a direction in the order applying section 201 of the Act. In practice most new TPOs include such a direction so that they come into immediate effect. The direction provides provisional protection for a period of six months, commencing from the date specified in the direction (usually the date on which the TPO is made). The TPO still needs to be confirmed by the authority. If the TPO is not confirmed within the six months period the provisional protection comes to an end.

Proposals

- 3.4 To assist in the streamlining of the TPO regime we propose that all new TPOs will come into force provisionally on the date they are made, without any need for a direction to be made. This would remove unnecessary complication from the system.
- 3.5 We propose that all new TPOs would lapse after six months unless confirmed within that period.

Question 3: Is the proposed provisional protection helpful to authorities and, given the interests of tree owners, fair and reasonable?

If not, what changes are needed?

Informing interested parties

Background

- 3.6 Prior to August 1999, authorities were required to send copies of TPOs to the owners and occupiers of the land where the trees covered by a new or varied TPO were situated. The 1999 Regulations⁸ changed the process of notifying interested parties so that authorities are currently required to also send copies to the owners and occupiers of any adjoining land, even where they have no rights over the trees protected.
- 3.7 This has resulted in authorities sending copies of TPOs to occupiers of individual properties and, in some cases, multiple copies to all the occupiers of neighbouring blocks of flats even though they may be located some distance from the trees in question.

Proposals

- 3.8 A TPO is a restriction on land and the way it is used. We consider that the main purpose of sending out copies of newly made TPOs should be to allow those people whose land will be subject to this restriction to make representations and to have them considered before the authority confirms the TPO.
- 3.9 We propose that copies of newly made (and varied) TPOs should, as a minimum, be sent to the owners and occupiers of the land on which the trees covered by the TPO are situated and others who have a right to prune or fell the trees. This would include properties adjacent to the land on which the protected trees are situated and overhung by the branches of those trees so as to avoid inadvertent contravention of TPOs.
- 3.10 The proposal would reduce the number of people who must be served a copy of a new TPO. Authorities would no longer be required to notify the owners and occupiers of neighbouring properties who do not have a right to prune or fell the trees being protected. However, it would remain open to authorities, if they so wished, to notify others who might be affected by the TPO or to inform people how trees in their neighbourhood are being managed.
- 3.11 Where a TPO is made as a result of a 'section 211 notice' (for proposed work to a tree growing in a conservation area) it is proposed that the authority will also provide a copy of the TPO to any agent who submitted the notice.

Question 4: Is the proposed minimum notification of new or varied TPOs targeting the right people?
If not, what changes are needed?

⁸ See regulation 3.

Exceptions to the need for obtaining consent

Background

3.12 TPO legislation specifies several circumstances where consent is not required to carry out work to trees protected by a TPO. Section 198(6)(a) of the Act states that a TPO shall not apply to the cutting down, uprooting, topping or lopping of trees which are dying or dead or have become dangerous.

3.13 Currently the broad scope of this exception presents uncertainty for those wanting to carry out what they believe to be exempt work. For example the term "dying" is often confused with "diseased", even where the effect of the disease may not be fatal. Clarity is required to avoid unnecessary disputes between tree owners and authorities.

Proposals

3.14 It is important that the ambiguity and grounds for dispute are removed to assist those entitled to work on protected trees. The proposed changes will provide clarity on people's expectations and reduce the possibility of inadvertently being drawn into a dispute with the authority. The changes will also remove the ambiguity which can be exploited by those wanting to remove healthy trees and avoid enforcement action by authorities.

3.15 We proposed that the exception relating to "dying" trees is omitted. Works to a tree that has become dangerous would continue to be exempt from the need to obtain consent, but this exception would be limited to that work which is urgently necessary in the interests of safety. The exception relating to dead trees would continue unchanged.

Question 5: Are the proposals to remove the current exemption for work to dying trees and limiting work to dangerous trees useful clarification, and reasonable?

If not, what changes are needed?

Consents

Background

- 3.16 Tree preservation orders made before 2 August 1999 contain a power for authorities to modify or revoke consents they have issued, but it is rarely used. The 1999 Regulations did not continue this power in relation to TPOs made on or after that date.
- 3.17 Consent is given to carry out specific work which has been assessed on the tree and its location at a specific point in time. Applicants usually carry out the work permitted soon after consent is received from the authority but, unless specified otherwise, the consent will last in perpetuity. If work is delayed for several years, it may no longer be appropriate and if carried out could inadvertently damage the tree, at which time the right to claim compensation may have expired. The authority has the power, therefore, to impose a condition on a consent to limit its duration.
- 3.18 Authorities do not always consider applications for programmes of work (e.g. for large gardens) or repeated operations over a number of years (e.g. on regularly pollarded trees). In these cases tree owners have to apply for consent every time they wish to prune a protected tree.

Proposals

- 3.19 The power to modify or revoke a consent for work to a tree protected by a TPO would be removed from every TPO made before 2 August 1999 (see paragraph 2.6). We do not propose to replace this power in the new regulations, so bringing all TPOs onto an equal footing. This would also remove the need for appeals against modification or revocation to the Secretary of State.
- 3.20 We propose that a default period of one year would be set for the duration of any consent issued by an authority for work to a tree protected by a TPO. This may be varied by the authority.
- 3.21 Authorities would be more able to consider applications for works to trees that are to be repeated on an annual or regular basis or for a series of operations over a stated period of time (e.g. five years). This would benefit applicants by reducing the need for repeated applications and reduce the burden on authorities of processing unnecessary applications.

Question 6: Do you agree that the power to vary or revoke consents for work under TPOs made before 2 August 1999 should be removed?

If not what changes are needed?

Question 7: Is a default period of one year for the duration of consents reasonable?

If not what changes are needed?

Question 8: Will the opportunity to consider repeated operations, or programmes of work, assist tree owners in their management of protected trees?

If not what changes are needed?

Planting replacement trees

Background

3.22 When consent is granted to remove a protected tree, authorities will consider whether a condition requiring a new tree to be planted is necessary.

3.23 Tree preservation orders contain special provisions about replanting of woodlands. These will apply where the authority grant consent for tree removal when a felling licence is not required. Where the authority grant consent for the removal of trees protected by a woodland TPO they give the landowner a direction (not a condition) to replant.

Proposals

3.24 It is proposed that provisions allowing replanting directions for woodland would be removed from every TPO. Revised provisions in the draft regulations would allow authorities to frame conditions to cover the planting of replacement trees in any situation, including in woodlands. This would provide a single but flexible approach and help ensure that authorities only apply conditions when and as appropriate (i.e. tailoring the replanting requirement to the site in question and its characteristics).

Question 9: Is the proposed change to secure planting of replacement trees in woodlands by conditions reasonable?

If not, what changes are needed?

Compensation

Background

3.25 Compensation may be payable by authorities for loss or damage caused or incurred as a result of their refusal of consent under a TPO or their granting consent subject to conditions.

3.26 For all TPOs made before 2 August 1999 authorities are able to issue an "article 5 certificate"⁹ which removes their liability to pay compensation under the TPO. These certificates may be issued where the authority is satisfied that their decision is made in the interests of good forestry practice or that the trees or woodlands are of outstanding or special amenity value. Local planning authorities have previously been advised to use article 5 certificates with discretion and not simply as a means of avoiding potential liability of compensation. However there is some evidence that these certificates are not always applied with discretion.

3.27 The model order introduced by the 1999 Regulations contains a revised and more clearly defined compensation framework, which only applies to TPOs made on or after 2 August 1999. At the same time the power to issue an article 5 certificate was removed for decisions made on applications for work to trees protected by TPOs made on or after this date.

3.28 There are therefore two compensation systems in operation, depending on when a TPO was made, which is confusing and inconsistent.

Proposals

3.29 We propose to adopt a single compensation system to create a consistent and even-handed approach. The compensation system currently contained within the 1999 Regulations would be adopted for all TPOs whenever they were or will be made.

3.30 The proposals do not alter the right to claim compensation from an authority, for any loss or damage resulting from refusal of a TPO application or imposition of conditions on approvals. The liability of the authority to pay compensation would be for claims over £500. The authority would not be liable to pay compensation for loss of development value, or loss or damage that was not reasonably foreseeable when the authority (in the light of the information supporting the application) decided the application.¹⁰

3.31 We propose that the power to issue an article 5 certificate would be removed when the provisions of all TPOs are removed (see paragraph

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¹⁰ See regulation 24 of the draft regulations in Annex A for the full limitations.

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2.6). This specific power would not be replaced so authorities will no longer be able to remove their liability to pay compensation arising from their decisions on works to trees protected by TPOs.

Question 10: Are the proposed changes with regard to compensation fair and reasonable?

If not, what changes are needed?

Question 11: Do you have any further comments to make about the draft regulations?

Section 4

Draft impact assessment

A draft impact assessment is attached at Annex B. Answers to the following questions would be particularly useful in preparing the final version.

Question 12: Do you have any general comment of the outcomes predicted in the impact assessment, particularly about the costs and benefits?

Question 13: Are there any benefits to the 'do nothing' option of not consolidating regulations and creating a unified system for TPO