

Tree Preservation Orders: new regulations

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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Publication title: Tree Preservation Orders: new regulations

Date published: August 1999

Price: Free (web only)

Summary

Summary of the main changes for local authorities. A revised version of Model form of Tree Preservation Order is available to download below. This takes account of the Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006, which came into force on 7 June 2006.

Order

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Contents

[Introduction](#)

[Changes to the model form of TPO](#)

[Making and confirming TPOs](#)

[Varying and revoking TPOs](#)

[Compensation](#)

[Appeals](#)

[LPA work on protected trees](#)

[Felling Licences](#)

[Annex 1: Model Letter to People Affected by a TPO1](#)

Introduction

1. The Town and Country Planning (Trees) Regulations 1999 are due to come into force on 2 August. They will replace all existing secondary legislation on the subject of tree preservation orders (TPOs). This paper briefly explains how the new Regulations will affect the way local planning authorities (LPAs) administer the TPO system.

Changes to the model form of TPO

1. Any TPO made on or after 2 August 1999 will have to follow the new model form of order, which is set out in the Schedule to the Regulations. LPAs will have to replace their current form of TPO with the new form before the new Regulations come into force. A copy of the new model form is at the bottom of this page.
2. The new model TPO includes updated exemptions from TPO controls for statutory undertakers, including the utilities. It also includes a revised exemption for work on fruit trees. Tree work in commercial orchards will continue to be exempt from the TPO system, but exempt work on other fruit trees will extend only to pruning in accordance with good horticultural practice.

Making and confirming TPOs

1. There will be some changes to procedures when making and confirming a TPO. From 2 August, the LPA will no longer have to copy a TPO to the Forestry Commission or the District Valuer, either when it is made or confirmed. On making a TPO, however, they will have to copy it to the owners and occupiers of land affected by the order, and under the new Regulations this will include the owners and occupiers of any land adjoining the land on which the protect trees are situated.
2. There will also be some minor changes to the letter that LPAs, on making a TPO, have to send to people affected by the TPO. For example, the letter will have to specify the date by which any objections or other comments about the TPO should be received by the LPA. A model letter is provided at [Annex 1](#) of this paper.
3. The LPA's decision on whether or not to confirm the TPO will have to be recorded on the TPO document itself. So, if the TPO is confirmed without modifications, the TPO should be endorsed or stamped accordingly, including the date on which the decision was made. The same applies to decisions to confirm the TPO subject to modifications and, indeed, decisions not to confirm the TPO.
4. As soon as practicable after confirming a TPO, the LPA will have to notify the people affected by the TPO of (1) their decision, including the date on which the TPO was confirmed, and (2) the time within which the validity of the LPA's decision may be challenged in the High Court, and the grounds on which such a challenge may be made (ie that the TPO is not within the powers of the Act, or that the requirements of the Act or Regulations have not been complied with in relation to the TPO).

Varying and revoking TPOs

1. When the new Regulations come into force, varying and revoking TPOs will be subject to much simpler procedures. There will be no requirement on the LPA to invite objections and representations, and then confirm any decision to revoke a TPO. Nor will they have to confirm any decision to vary a TPO in cases where no new trees or woodlands are being added to the order. Instead, the decision to revoke or vary the TPO in these circumstances will take immediate effect, although the LPA will be required to inform the people affected by the revocation or variation of their decision. Any decision to vary or revoke a TPO will also have to be recorded formally on the TPO document.

Compensation

1. As noted above, TPOs made after 2 August will have to follow the new model form of TPO. The new form contains new compensation provisions (see article 9). When deciding an application under these TPOs, the LPA will not be able to make what is known as an "article 5 certificate" (ie a certificate that the trees have an outstanding or special amenity value, or that the LPA's decision is in the interests of good forestry), the effect of which is to remove rights to compensation for loss or damage arising in consequence of the LPA's decision.
2. Instead, there will be a general right to compensation for such loss or damage, subject to a number of exceptions and conditions set out in the TPO. For example, the onus will be on the person claiming compensation to show that the loss or damage has arisen in consequence of the LPA's decision. The LPA will not be liable for any loss or damage which they could not reasonably have foreseen at the time they made their decision. To prevent an increase in petty claims for minor loss or damage caused by trees, there will be no right to compensation where the claim is for less than £500. Furthermore, there will be no compensation for loss of "development value" or other diminution in the value of land, or for the costs incurred in bringing an appeal to the Secretary of State.
3. These new provisions, however, will not apply to applications under TPOs which were made before 2 August 1999. Under these TPOs, the existing compensation system, including the LPA's ability to make article 5 certificates, will continue to apply.

Appeals

1. The new Regulations will require the parties to all TPO appeals which are handled under the written representations procedure (except appeals against tree replacement notices) to submit their representations within specified time limits.
2. When the Government Office receive a TPO appeal, they will write to both parties notifying them of the appeal's "starting date". The LPA will be required to complete and return a questionnaire (which will ask for copies of the paperwork relevant to the appeal: the TPO, the application, the LPA's decision etc) within two weeks of the starting date. Further representations from both sides will have to be submitted within six weeks from the starting date. After the six weeks, the Government Office will write to the parties again, giving a further two weeks for the submission of any final representations.
3. The new Regulations depart in some respects from the proposals published in last year's consultation paper. This is because we decided to bring the system broadly into line with the Government's proposals to reform other planning appeals.

LPA work on protected trees

1. When the new Regulations come into force, LPAs will no longer have to apply to the Secretary of State for consent to carry out work on their own trees protected by TPOs. But before carrying out work on such trees, the LPA will have to publicise each proposal by displaying a site notice on or near the site on which the trees are situated. The site notice will have to give details of the proposal and the LPA's reasons for it, and will have to specify a date (at least 21 days from the date of the site notice) by which any comments on the proposal should be received by the LPA. Any comments received will have to be considered before the LPA make a decision on the proposal, and this decision must not be made by a committee or officer of the Council responsible for managing the land in question.

Go to table of contents

Felling Licences

1. From 2 August 1999 the Forestry Commission will no longer refer certain types of felling licence applications to the LPA for decision under the relevant TPO. Their normal practice will be to decide all felling licence applications themselves. Where protected trees are involved, however, they will consult the LPA responsible for the TPO before reaching their decision, and the LPA will retain their right to object in cases where the Forestry Commission propose to grant a felling licence, and the LPA disagree.

Any queries on this paper should be referred to:

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Annex 1: Model Letter to People Affected by a TPO¹

Important - this communication may affect your property

Town and Country Planning Act 1990 Town and Country Planning (Trees) Regulations 1999

Tree preservation order: [title]
[name of Council]

THIS IS A FORMAL NOTICE to let you know that on [insert date] the Council made the above tree preservation order.

A copy of the order is enclosed. In simple terms, it prohibits anyone from cutting down, topping or lopping any of the trees described in the First Schedule and shown on the map without the Council's consent.

The Council have made the order because [give reasons].

[The order took effect, on a provisional basis, on [insert date]. It will continue in force on this basis for a further 6 months or until the order is confirmed by the Council, whichever first occurs.]

The Council will consider whether the order should be confirmed, that is to say, whether it should take effect formally. Before this decision is made, the people affected by the order have a right to make objections or other representations about any of the trees, groups of trees or woodlands covered by the order.

If you would like to make any objections or other comments, please make sure we receive them in writing by [insert date - give at least 28 days from the date of the notice]. Your comments must comply with regulation 4 of the Town and Country Planning (Trees) Regulations 1999, a copy of which is provided overleaf. Send your comments to [name and address of LPA officer]. All valid objections or representations are carefully considered before a decision on whether to confirm the order is made.

The Council will write to you again when that decision has been made. In the meantime, if you would like any further information or have any questions about this letter, please contact [name, address and telephone number of LPA officer].

Dated: [insert date]

Signed: [Council's authorised officer] on behalf of [Council's name and address]

1: to be served by the LPA when making a tree preservation order.

Copy of Regulation 4 of The Town and Country Planning (Trees) Regulations 1999

Objections and representations

4(1) Subject to paragraph (2), objections and representations -

(a) shall be made in writing and -

(i) delivered to the authority not later than the date specified by them under regulation 3(2)(c); or

(ii) sent to the authority in a properly addressed and pre-paid letter posted at such time that, in the ordinary course of post, it would be delivered to them not later than that date;

(b) shall specify the particular trees, groups of trees or woodlands (as the case may be) in respect of which the objections or representations are made; and

(c) in the case of an objection, shall state the reasons for the objection.

4(2) The authority may treat as duly made objections and representations which do not comply with the requirements of paragraph (1) if, in the particular case, they are satisfied that compliance with those requirements could not reasonably have been expected.

