

**Tree Preservation Order Legislation: The Town and Country Planning (Tree Preservation) (England) Regulations 2012.**  
Report by Historic Environment Manager

<p><b>Summary:</b> The Government has recently published new legislation regarding Tree Preservation Orders. This new legislation follows consultation on the simplification of issuing and management of Tree Preservation Orders. The consultation itself and the Broads Authority response to the consultation have been the subject of a previous report.</p> <p><b>Recommendation:</b> That members note the new legislation as it applies to Tree Preservation Orders and the changes in Broads Authority procedures relating to the new legislation.</p>
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## **1 Introduction**

- 1.1 In February 2008 members received a report on a consultation on changes to the Tree Preservation Order Legislation. The Authority's arboricultural consultant reviewed the proposals and their implications for members' consideration. Members agreed a response to that consultation.
- 1.2 The Town and Country Planning (Tree Preservation) (England) Regulations 2012 were subsequently published on 6 April 2012. The revisions to the legislation are intended to simplify the system and the main changes are set out in Section 2 below.
- 1.3 The Government acknowledge the need for strong tree protection remains as pertinent today as it did in 1947 when the Town and Country Planning Act was first enacted. If anything, the pressures on trees are even greater now, given the pressure on land for development.
- 1.4 The Government considered that the TPO system had stood the test of time and therefore wholesale changes were not required. However, there were several improvements that could be made to remove some of the complexities and to streamline the procedures for benefit to both Local Planning Authorities (LPAs) and the public.
- 1.5 Appended is the - Protected trees "A Guide to Tree Preservation Order procedures document published by the CLG for members' information.

## 2 Changes to the Existing System/Legislation

### 2.1 The main changes are:

- (1) All TPOs made after the 6 April 2012 will come into force on the date they are made for a period of six months. The TPO will lapse after six months unless it has been confirmed by the Local Planning Authority. The TPO cannot be confirmed after that date. If the LPA wishes to continue the protection or have another opportunity to confirm the order they will have to make a new TPO.

*Previously a temporary order under Section 201 of the Town and Country Planning Act could be in force until the TPO was confirmed*

- (2) Copies of TPOs would be sent only to the owners and occupiers of the land where the trees are situated.

*Previously copies were sent to all adjacent landowners/occupiers*

- (3) Applications to prune or fell protected trees have to be submitted on a standard form prescribed by the Secretary of State.

*Previously there were a huge variability of styles and content in the numerous individually produced forms submitted to LPAs. Given this fact there were quite often inconsistencies in information requested.*

- (4) Appeal against the Local Planning Authority decisions in relation to TPOs would be determined on the basis of the information and evidence considered by the Authority, together with a visit to the site.

*Previously additional information could have been submitted during the submissions forming part of the appeals process which could often differ from that initially submitted with the application.*

- (5) Decisions on appeals would be taken by inspectors as appointed by the Planning Inspectorate.

*This differs little from previously, with the exception of the process with which the appointed inspector considers the appeal – see above.*

### **In addition to those changes previously consulted upon the Government has included two further additional requirements –**

- (6) An additional requirement for a tree owner (other than a Statutory undertaker) to give written prior notice to a Local Planning Authority of their intention to carry out works authorised by an exemption unless there is imminent danger.

*This gives the LPA the opportunity to ensure that the works are indeed exempted and consequently reduce the potential for litigation.*

- (7) Increase the default period for the duration of consents for work on trees from 1 year to 2 years.

*This is aimed to increase flexibility for tree owners and make it consistent with the existing period for carrying out notified work to trees in Conservation Areas.*

2.2 The principal implications are considered by Government to be a reduction in the resources required for the administration of Tree Preservation Orders and applications to work on trees protected by TPOs through:

- the simplification of the process for serving or varying a TPO;
- the national provision of standard documentation (application forms) and requirements of information supplied by applicants; and
- the speeding up of the appeals process where applications for works have been refused by the Authority.

These implications are summarised below.

### 2.3 **Making and Varying a TPO**

2.3.1 The decision to send copies of the new or varied TPO to only the owner/occupier of the land affected is reverting back to the pre 1991 position.

2.3.2 It is up to the LPA if they wish to send further copies to third parties, for example, where the trees overhang the adjacent properties. This could be undertaken by sending 'flyers' outlining the details of the TPO rather than the complete document.

### 2.4 **Application for Consent to Carry Out Works to Trees**

2.4.1 Previously any application to carry out the work on trees had the following statutory requirements, namely:

- (i) the application is made in writing;
- (ii) it must identify the trees to which the application relates by reference to a plan if necessary;
- (iii) it must specify the operations for which consent is sought; and
- (iv) state the reason for making the application.

2.4.2 Given the variability of styles and content in the numerous individually produced forms, there were often inconsistencies in the lack of information requested.

2.4.3 The introduction of a national standard application form which is mandatory. It allows applications not submitted on the standard form or were not

substantially the same, to be turned away and at the same time provide a more consistent application and decision making process.

2.4.4 It should be noted that the LPA can request further information to clarify technical issues but will not be able to rely on a power to require it.

2.4.5 Over and above this, the form suggests that applications, which claim that the proposed works are necessary because a tree is unhealthy or unsafe, or because it is implicated in subsidence damage, must be accompanied by reports from relevant experts.

2.4.6 With regard to the Section 211 Notification for Works to Trees in Conservation Areas, it is proposed that a standard form is used but this will not be mandatory.

## 2.5 Appeals

2.5.1 Given the level of TPO appeals (approximately 750 per annum nationally) and the fact that these take an average of 26 weeks from start to finish, the process is quite clearly bureaucratic and long winded. The new legislation requires the:

- (i) introduction of a fast track procedure for dealing with TPO appeals; and
- (ii) delegation of decisions on these cases to inspectors appointed by the Planning Inspectorate.

It is suggested that this would offer substantial improvements for both parties (applicant and Local Planning Authority) and generate considerable savings.

It will also encourage a greater level of detail to be submitted as part of the initial application to qualify for proposed works.

2.5.2 The new fast track procedure is as follows:

- Check preliminary information.
- Check validity.
- Issue questionnaire.
- Site visit.
- Inspectors decision.
- Option of appeal to the High Court.

## 2.6 Effect on the Broads Authority

2.6.1 It has been calculated that the proposed amendments provide a net cost saving estimated at £535,000 per annum nationally.

2.6.2 Although the Broads Authority budget for the serving and management of Tree Preservation Orders and works to trees in Conservation Areas is relatively modest and forms part of the overall Cultural Heritage budget

currently £25,000 for 2012/13. The anticipated time, resource benefit implications are welcomed.

### **3 Conclusions**

- 3.1 It is considered that the proposed amendments within the Town and Country Planning (Tree Preservation) (England) Regulations 2012 will provide benefits in both time and resources for the management of Tree Preservation Orders and applications to work on protected trees

Background Papers: Nil

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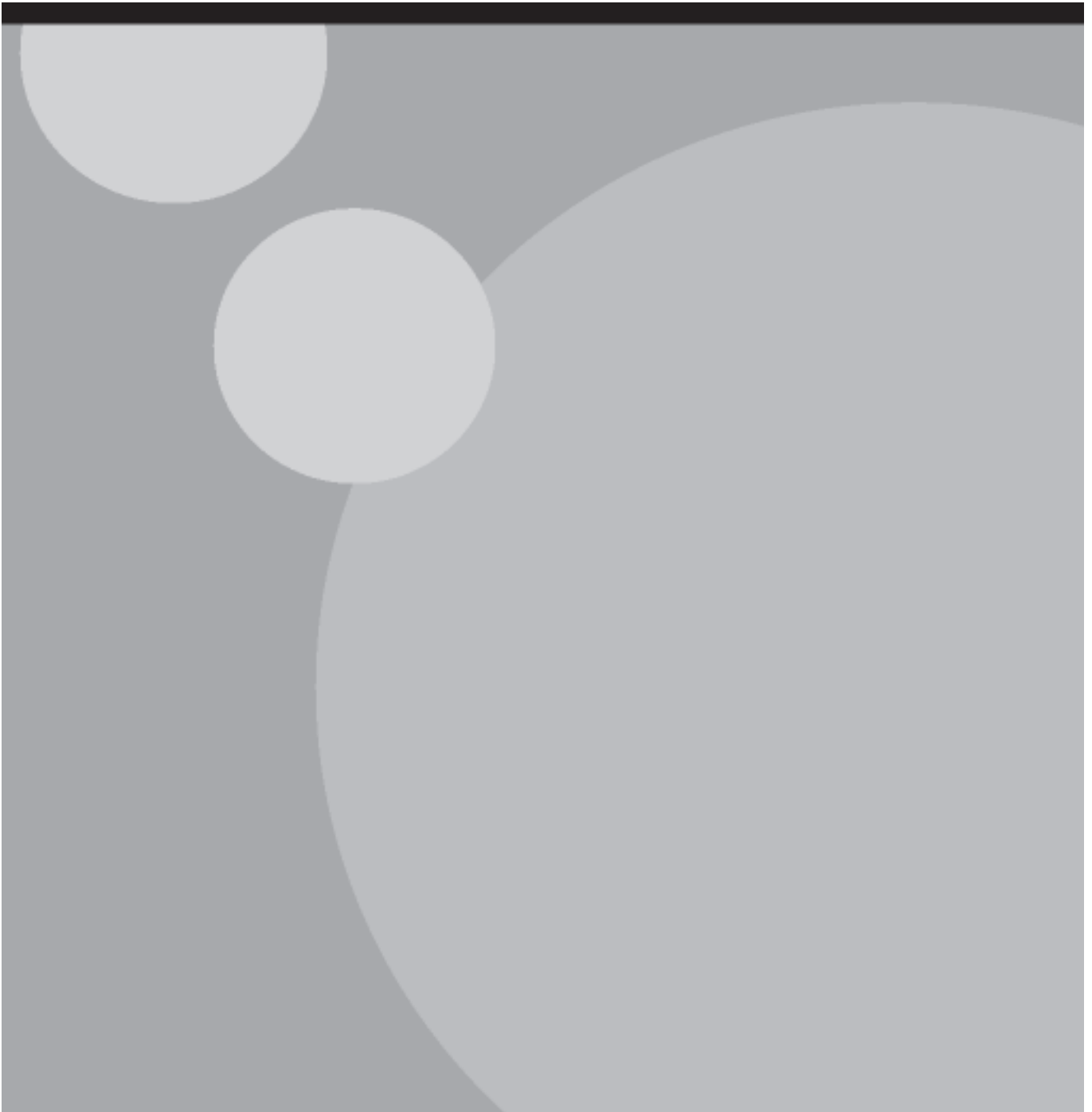
Broads Plan Objectives: None

Appendices: APPENDIX 1: Protected trees “a guide to tree preservation order procedures” document published by the CLG.



## Protected trees

A guide to tree preservation procedures





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# Protected trees:

## A guide to tree preservation procedures

### Introduction

This leaflet is written for tree owners, their neighbours and local community groups, and answers some of the most common questions about tree preservation procedures in England. It is for information only and you should consult a solicitor if you are unsure of your legal rights or obligations.

**Please note that new tree preservation legislation came into force on 6 April 2012 which affects all existing and new tree preservation orders. This leaflet updates the leaflet published in 2010, which is now cancelled.**

### Questions and answers

#### 1. What is a tree preservation order?

It is a written order made by a local planning authority (e.g. a borough, district or unitary council or a national park authority) which, in general, makes it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree protected by that order without the authority's permission.

#### 2. What is the purpose of a tree preservation order?

To protect trees which bring significant amenity benefit to the local area. This protection is particularly important where trees are under threat.

#### 3. What type and species of trees can a tree preservation order protect?

All types, but not hedges, bushes or shrubs. An order can protect anything from a single tree to all trees within a defined area or woodland. Any species can be protected, but no species is automatically protected by a tree preservation order.

#### 4. How can I find out if a tree is protected by a tree preservation order?

Contact the local planning authority. Details of tree preservation orders will be available for inspection at its offices.

An official search of the local land charges register can also be made before you buy a property. This should reveal the existence of an order and whether a property is in a conservation area (see question 18). Make sure your legal adviser tells you if any trees are protected.

**5. If I see work being carried out on a protected tree, how can I find out if the owner has permission?**

Check with the local planning authority, which will have a register of applications and decisions that you can look at.

**6. There are trees which I think should be protected by a tree preservation order. What can I do?**

Contact the local planning authority, giving details of the trees and the reasons why you think the trees should be protected.

**7. When does a tree preservation order come into effect?**

Provisional protection comes into effect as soon as the local planning authority makes the order. The authority will then need to confirm the order to provide long-term protection.

**8. How will I know when a local planning authority makes a tree preservation order?**

The authority will write to those who may have a right to work on the tree, generally the tree owner and sometimes others, such as tenants and neighbours. Copies of new orders are also available for inspection at the planning authority's offices.

**9. How can I object to or express support for a new tree preservation order?**

Write to the local planning authority within the period it allows for comment (usually 28 days), identifying the tree or trees in question and giving your reasons.

The authority will take your comments into account when deciding whether or not to confirm the order. The authority can also modify an order when it confirms it, for example to exclude some of the trees.

**10. Does the local planning authority become responsible for looking after protected trees?**

No. Owners remain responsible for trees covered by tree preservation orders, their condition and any damage they may cause. But the authority's permission is usually required before any work is carried out to the trees (see questions 11-14).

The authority may be able to offer help and advice on how the trees should be managed.

**11. What if I want to work on a tree covered by a tree preservation order?**

Apart from special exceptions (see questions 13-15) you (or your agent) must seek permission from the local planning authority by submitting a standard application form to it. The form is available from the Planning Portal ([www.planningportal.gov.uk](http://www.planningportal.gov.uk)) or the authority. It is important to clearly specify

the work you want done and provide information to support your case (such as professional advice on the health of the tree and, in cases of alleged subsidence, professional evidence on the soil, the structure affected and the tree).

Before making an application you may find it helpful to consult a tree surgeon or arboricultural consultant to help you clarify what you need to do. Information on selecting a tree expert can be found at [www.tree-care.info/findanarb](http://www.tree-care.info/findanarb).

You may also find it helpful to refer to the local planning authority's website for information on tree protection in the local area.

### **12. Do I need a Forestry Commission felling licence to fell protected trees?**

You do not need a licence to fell trees in gardens. However, for trees outside of gardens, you may need to apply to the Forestry Commission for a felling licence, whether or not they are covered by a tree preservation order.

You can find out more about felling licences from the Forestry Commission (see *Further information* at the end of this leaflet).

### **13. Do I always need the local planning authority's permission to work on a tree covered by a tree preservation order?**

Yes, except for:

- 1) cutting down trees in accordance with one of the Forestry Commission's grant schemes, or where the Commission has granted a felling licence (see question 12);
- 2) cutting down or pruning a tree:
  - which presents an urgent and serious safety risk – however you must give written notice (by letter or email) of the proposed work to the local planning authority as soon as practicable after the work becomes necessary;
  - which is dead – however you must give at least five working days written notice (by letter or email) of the proposed work to the local planning authority;
  - which is directly in the way of development that is about to start for which detailed planning permission has been granted (see questions 20 and 21);
  - in a commercial orchard, or pruning fruit trees in accordance with good horticultural practice;
  - to prevent or control a legal nuisance (you may find it helpful to check first with a solicitor);
  - in line with an obligation under an Act of Parliament;

- by or at the request of certain organisations listed in the regulations (see Further information at the end of this leaflet).

3) removing dead branches from a living tree

If you are in any doubt about what needs permission, check with the local planning authority (see question 14).

#### **14. What happens if I carry out work on a protected tree without permission?**

If you deliberately destroy a protected tree, or damage it in a manner likely to destroy it, **you could be liable to an unlimited fine**. You could also be fined if you cause or permit such work. Other offences can lead to fines of up to £2,500.

#### **15. When will I have to plant a replacement tree?**

You will have to replant:

- 1) if you cut down or destroy a protected tree:
  - in breach of a tree preservation order, or
  - because the tree is dead or dangerous;
- 2) if the local planning authority gives you permission to cut down a protected tree but makes replanting a condition of its consent;
- 3) in most cases where the Forestry Commission grants a felling licence.

Local planning authorities have legal powers to ensure that you plant a replacement tree when required.

#### **16. What if my application to carry out work under a tree preservation order is refused, or I object to the conditions imposed by the local planning authority?**

You can appeal to the Secretary of State for Communities and Local Government in writing within 28 days of receiving the local planning authority's decision. The authority will give you the address. The Secretary of State may allow or dismiss the appeal, or vary the original decision.

Further information about tree preservation and tree replacement appeals is on the Planning Portal ([www.planningportal.gov.uk](http://www.planningportal.gov.uk)).

#### **17. Can I get compensation if my application to carry out work under a tree preservation order is refused or conditions are imposed?**

In certain circumstances which are set out in the legislation (see Further information) you can seek compensation from the local planning authority for loss or damage which results from the authority refusing consent or granting consent with conditions. However, the legislation sets limitations and strict criteria that must be met. See question 11 regarding the need for adequate information to support your case.

Claims should be sent to the local planning authority within 12 months of its decision, or within 12 months of the Secretary of State's decision if you appealed.

### **18. How are trees protected in a conservation area?**

Normal tree preservation order procedures apply if a tree in a conservation area is already protected by a tree preservation order. But if a tree in a conservation area is not covered by an order, you have to give written notice (by letter or email) of proposed work to the local planning authority, describing what you want to do, at least six weeks before the work starts. This gives the authority an opportunity to consider protecting the tree with a tree preservation order.

You do not need to give notice of work on a tree in a conservation area less than 7.5 centimetres in diameter, measured 1.5 metres above the ground (or 10 centimetres if thinning to help the growth of other trees).

The answer to question 14 also applies to trees in conservation areas, so if you are not sure about what you should do, check with the local planning authority.

### **19. How are trees on development sites affected?**

They can be protected by a tree preservation order or by a condition attached to a planning permission, or both. A planning condition may also require trees to be planted, which may then be protected by a tree preservation order.

### **20. Can I stop planning permission being granted – or prevent approved development being carried out – by getting a tree preservation order imposed on trees on the site?**

No. A tree preservation order does not prevent planning permission being granted. But a local planning authority will consider the risk to protected trees when deciding planning applications.

Once detailed planning permission is granted, felling that is directly required to enable the development to go ahead may be carried out.

### **21. Can I carry out work on protected trees which are in the way of proposed development?**

You can only cut down or cut back protected trees if they are directly in the way of development which is about to start and for which detailed planning permission has been granted.

If you have outline planning permission or if the development does not require planning permission (a small home extension, for example) you must still apply to the local planning authority for permission under the tree preservation order in the normal way.

If you are in any doubt about what is required, check with the local planning authority (see question 14).

## **22. What happens to tree preservation orders made before 6 April 2012 under old procedures?**

On 6 April 2012 the Town and Country Planning (Tree Preservation)(England) Regulations 2012 introduced a single set of procedures for all trees covered by tree preservation orders. Consequently:

- orders made before 6 April 2012 continue to protect the trees they cover and answers to earlier questions apply;
- the legal provisions listed in orders made before 6 April 2012 have been automatically cancelled and replaced by the provisions in the new regulations. Only the information necessary to give these orders legal effect and identify the trees they protect is retained;
- there is no need for existing orders to be remade, amended or reissued.

## **Further information**

You can find out more about felling licences in the Forestry Commission's booklet *Tree Felling – getting permission* ([www.forestry.gov.uk](http://www.forestry.gov.uk) or telephone 0161 495 4845).

You can find out more about tree preservation orders in the Town and Country Planning (Tree Preservation) (England) Regulations 2012, which are available through [www.legislation.gov.uk](http://www.legislation.gov.uk) or TSO (telephone 0870 600 5522) and some public libraries.

You can also find more information about the tree preservation order and planning systems on the Planning Portal ([www.planningportal.gov.uk](http://www.planningportal.gov.uk)).

You may also find it helpful to refer to the local planning authority's website for information on tree protection in the local area.

There is guidance on selecting a tree expert at [www.tree-care.info/findanarb](http://www.tree-care.info/findanarb).