



Important Changes to Tree Preservation Order Regulations

Town and Country Planning (Tree Preservation) (England) Regulations 2012 - Main Changes

The Town and Country Planning (Tree Preservation) (England) Regulations 2012 come into force on the 6th April 2012. They can be found at: www.legislation.gov.uk/uksi/2012/605/contents/made

The main changes are outlined below.

The new regulations put all tree preservation orders (TPOs) onto the same footing and consolidate existing legislation into one new set of regulations. This will be achieved by:

- Cancelling the provisions in every existing TPO, except for the information identifying the trees protected, and replacing with provisions in the new regulations which will introduce a new model order in a slimmed-down format. This will introduce a unified system, removing the inconsistencies that authorities and the Planning Inspectorate have to resolve. The aim is a simpler system for local authorities to administer and which is easier for tree owners and others to use.
- Consolidating existing legislation that deals with procedural matters for making and administering TPOs in one set of regulations. This will be achieved by using powers in section 192 of the Planning Act 2008 to replace (in so far as they relate to England):
 - o The Town and Country Planning (Trees) Regulations 1999 (SI 1999, No.1892);
 - o The Town and Country Planning (Trees)(Amendment)(England) Regulations 2008 (SI 2008, No.2260);
 - o The Town and Country Planning (Trees)(Amendment No.2)(England) Regulations 2008 (SI 2008, No.3202);
 - o Subsections 198(3), (4), (6), (8) and (9), and sections 199, 201, 203-205 of the Town and Country Planning Act 1990

The duty imposed on authorities by section 197 of the Town and Country Planning Act 1990 to make TPOs as they think necessary when granting planning permission will remain unchanged, as will the more general power, in section 198 of that Act, to make these Orders in the interest of amenity. The proposed consolidation and streamlining will not change the level of protection provided to trees.

Immediate Protection from a TPO

Under the regulations to be replaced, there are two ways of making a TPO. In the first, the Order will only come into force once a local authority has considered all objections, made any amendments and confirmed the Order. Alternatively, where it appears that there is a need for the Order to come into force immediately, a local authority can include a direction to that effect and in practice, most new Orders are made this way. The direction provides provisional protection for a period of six months and the local authority concerned would need to confirm the Order to continue that protection. The new regulations adopt one system where all new orders will provide immediate provisional effect and authorities can confirm them after considering any objections or representations.

Informing interested parties

Prior to August 1999, local authorities were required to send copies of TPOs to the owners and occupiers of the land affected by a new or varied Order. The 1999 regulations added a requirement to send copies to the owners and occupiers of any adjoining land, even where they had no rights over the trees protected. This has created extra work for local authorities as, for example, they would have had to send multiple copies to all the occupiers of neighbouring blocks of flats even though they may have been located some distance from the trees in question. The regulations refocus the service of new Orders on those who have a right to prune or fell the trees covered by the Order. Local authorities will still be able to notify others, but this is now discretionary.

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Town and Country Planning (Tree Preservation) (England) Regulations 2012 - Main Changes (cont.)

Exemptions from the need for obtaining consent

Under the TPO regulations to be replaced, there are several circumstances where consent is not required to carry out work on protected trees. This includes trees that are dying, dead or have become dangerous. The broad scope of this exemption presents some uncertainty for those wanting to carry out what they believe to be exempt work. The new regulations omit “dying” from the exemptions.

Prior notification of intention to carry out exempted work

The new regulations now include a requirement for a tree owner to give written prior notice to the local authority of their intention to carry out works authorized by an exemption, unless there is an imminent danger. This requirement was present in pre-1999 orders and has been recommended as good practice.

Consents

TPOs made before August 1999 contain a power for local authorities to modify or revoke consent they have granted for specific work. The 1999 regulations did not continue this power in relation to Orders made on or after that date, thereby complicating the system. The new regulations revoke the power in relation to all such Orders, thereby simplifying the system by removing a power that was in any case rarely used.

Default period for duration of consents

The new regulations set a two year default period for the duration of consents for work on protected trees, with a power for the local authority to vary this if appropriate.

Planting replacement trees

Under the regulations to be replaced, when a local planning authority grants consent to remove a protected tree, they will consider whether a condition requiring a new tree to be planted is necessary. However, when replacement planting is required in woodland, the authority gives the landowner a direction (not a condition) to replant. The new regulations remove the need for directions by enabling conditions to be used in cases where replanting is required.

Compensation claims to the local planning authority for loss or damage arising from refusal of consent or conditions

Currently there are two compensation systems in operation:

- For all orders made before 2 August 1999, the local planning authorities are able to issue an ‘article 5 certificate’ which removes their liability to pay compensation under the Order. 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.
- The 1999 Regulations did not include this power, but introduced a revised and more clearly defined compensation framework for Orders made on or after 2 August 1999.

The new regulations extend the approach in the 1999 Regulations to all Orders by removing the power to issue article 5 certificates. The same compensation framework will therefore apply to all TPOs, irrespective of when made.

Questions

If you have any questions relating to the changes in this legislation, please feel free to contact the council’s Arboricultural Consultant on 01539 717373 or by email to: arb.off@southlakeland.gov.uk