

Annex E

Consultation response form

Tree preservation orders: proposals for streamlining

The questions on which we would particularly like your views are repeated below. This form is available on the CLG website, with an electronic version of the consultation paper at: www.communities.gov.uk

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Section 2: Consolidating the tree preservation order system		
Q.1 Will the proposal to consolidate legislation and introduce one system for TPOs benefit tree owners and local planning authorities?	Yes	X
	No	
Explanation/comment: This will introduce improved fairness, clarity, consistency and simplicity that will benefit all those involved with TPOs and should lead to better protection for important trees.		
Q.2 Will bringing all existing and future TPOs into the same shorter format be clearer for tree owners and help local planning authorities?	Yes	X
	No	

<p>Explanation/comment:</p> <p>This should speed up the process and make it less bureaucratic.</p> <p>A shorter, universal format would evidently be easier to understand however it would be desirable, including for reasons of clarity, to retain the reason for the TPO as one of the key elements of the TPO.</p>		
<p>Section 3: Streamlining the system</p>		
<p><i>Provisional effect of a TPO</i></p>		<p>Yes</p> <p>X</p>
<p>Q.3 Is the proposed provisional protection helpful to local planning authorities and, given the interests of tree owners, fair and reasonable?</p>	<p>No</p>	
<p>Explanation/comment:</p> <p>Agree that this will simplify the system; this is the most sensible default procedure. There are no sound reasons why a TPO should take more than six months to confirm, indeed there is a good case for saying that it should be shorter, e.g. three months. This would make the process faster and more efficient.</p>		
<p><i>Informing interested parties</i></p>		<p>Yes</p>
<p>Q.4 Is the proposed minimum notification of new or varied TPOs targeting the right people?</p>	<p>No</p>	<p>X</p>
<p>Explanation/comment:</p> <p>It is noted that the Local Planning Authority could extend the list of those being notified of a new TPO if deemed appropriate, however, it should be made clear whether or not bodies that can carry out works to protected trees under an exemption (such as statutory undertakers) should be informed directly at the time that a TPO is made.</p> <p>The HTF recognises that sending copies of TPOs to all those with a property interest and all those on adjacent sites, who may be thought to be affected, is often time consuming and wasteful. This is particularly true in the case of large development sites that may have many adjacent properties. However, one of the purposes of TPOs is to protect the amenity afforded to the community by trees and a neighbouring property/community may enjoy such amenity other than in the cases described in paragraph 3.10. It is therefore appropriate to continue to notify neighbouring properties which enjoy the amenity of the trees. This will be dependent of the distance and the size of tree, of course, and guidance is required to ensure an approach that is both consistent and reasonable in the use of scarce resources. Where neighbouring properties are notified on this basis it should be through</p>		

simplified paperwork, e.g. a letter and site plan, not the full Order.

Exceptions to the need for obtaining consent

Yes

X

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

No

Explanation/comment:

This is important in removing any ambiguity. No trees live forever and it can be argued that beyond a certain point all trees are dying, but some die back is not necessarily a justification for felling a tree that has been judged to be of value through a TPO. The removal of the exemption should lead to the more proactive management of the tree stock by the land owner and the local authority.

Presently there is a duty to replace trees removed under the exemption and replacements would be automatically covered by the TPO. Trees replaced under a condition to the consent are not automatically protected. It would be desirable to extend this protection if possible to avoid having to make a new TPO, e.g. in respect of a replacement tree to one that was 'dying' and removed by application and consent.

Consents	Yes	X
Q.6 Do you agree that the power to vary or revoke consents for work under TPOs made before 2 August 1999 should be removed?	No	
<p>Explanation/comment:</p> <p>This provision seems to be very little used.</p>		
Q.7 Is a default period of one year for the duration of consents reasonable?	Yes	X
	No	
<p>Explanation/comment:</p> <p>Limiting the duration of the consents is sound, but what is the justification for the one year default period in paragraph 3.20? The power of local authorities to vary this is welcome as there will be cases where it might be tied to a planning consent or to allow delays for other reasons, e.g. bat survey or seasonal factors</p>		
Q.8 Will the opportunity to consider repeated operations, or programmes of work, assist tree owners in their management of protected trees?	Yes	X
	No	
<p>Explanation/comment:</p> <p>This would be very valuable for operations like pollarding done on a regular basis.</p> <p>The Local Planning Authority should retain the power to fix the length of time over which a consent would be valid and the intervals between repeat works (e.g. every 3 years) cycles.</p> <p>The HTF believes that it would also be very helpful to have something similar for repeated works to Conservation Area trees.</p>		

Planting replacement trees	Yes	X
Q.9 Is the proposed change to secure planting of replacement trees in woodlands by conditions reasonable?	No	
<p>Explanation/comment:</p> <p>Trees replaced under a condition are not presently subject to the TPO and can be removed subsequently (usually after a period of 5 years). This is not consistent with the intentions of a Woodland TPO which is principally concerned with retaining the land use rather than specific trees. However, most significant applications are referred to the Forestry Commission for a felling licence.</p> <p>It will be beneficial to have a consistent system for securing the replacement of trees.</p>		
Compensation	Yes	X
Q.10 Are the proposed changes with regard to compensation fair and reasonable?	No	
<p>Explanation/comment:</p> <p>It will be good to clarify things and have a consistent system.</p> <p>Issues of compensation can be problematic for the Local Planning Authorities, which generally operate in risk averse environments and do not always budget for compensation payments. Damage resulting from a decision may be very unlikely, but still 'reasonably foreseeable' and officers have to make recommendations on the basis of being very cautious about risk, with the result that trees may be removed unnecessarily. However, the right to compensation should be retained and it is not fair to have different regulations in place depending on the date of the TPO.</p>		
General	Yes	X
Q.11 Do you have any further comments to make about the draft regulations?	No	

Comment:

1. In shaping the regulations it is important to remember that TPOs do not only protect specimen trees and large groups of trees. Individual, comparatively small trees frequently contribute to the character of an area and add to its amenity, especially in Conservation Areas. The way in which TPOs are used must be sensitive to these issues.
2. It would be helpful for the regulations to be accompanied by further guidelines and advice. As is clear from these comments on the draft, issues of public amenity are very important in the understanding and use of TPOs. A consistent approach to interpreting 'public' and 'amenity' would be helpful.
3. Para. 3(1) of the new draft Regulations omits the 'Area' classification as a type of TPO (although still included in the model order). The drawbacks of this class of order are well known, however, it remains a very useful classification as a means to protect trees, particularly when TPOs are made on a provisional basis pending confirmation (the class can be changed to a more specific designation before confirmation when more information may have become available). Having such flexibility is becoming more important as Local Authorities have to adapt to reduced resources.
4. Prohibited Activities: as 'wilful' damage can be difficult to prove consideration should be given to this being 'wilfully or negligently' damage or destroy.
5. A member authority has recently had a case in which a letter approving works to TPO trees was sent out in error. It then emerged that it would be impossible for the Council to rescind the 'decision'. Regrettable though it may be, it would be realistic to accept that errors do occur from time to time, and it would be beneficial all round to have a mechanism for dealing with them quickly.

Section 4: Draft impact assessment		
Q.12 Do you have any general comment of the outcomes predicted in the impact assessment, particularly about the costs and benefits?	Yes	X
	No	
<p>Explanation/comment:</p> <p>The HTF broadly agrees with the assessment.</p> <p>However, the consultation document states that potential administrative savings are relatively modest – 3% - and difficult to quantify. They may also be difficult to realise, but there seems to be no risk that administrative costs would increase and therefore any savings would be welcome. Other potential savings, notably from clarifying the law to reduce opportunity for legal dispute, have not been included in estimated figures because they may be case specific, but they could be significant.</p>		
Q.14 Are there any benefits to the ‘do nothing’ option of not consolidating regulations and creating a unified system for TPOs?	Yes	
	No	X
<p>Explanation/comment:</p> <p>Improvements to the system are required.</p>		