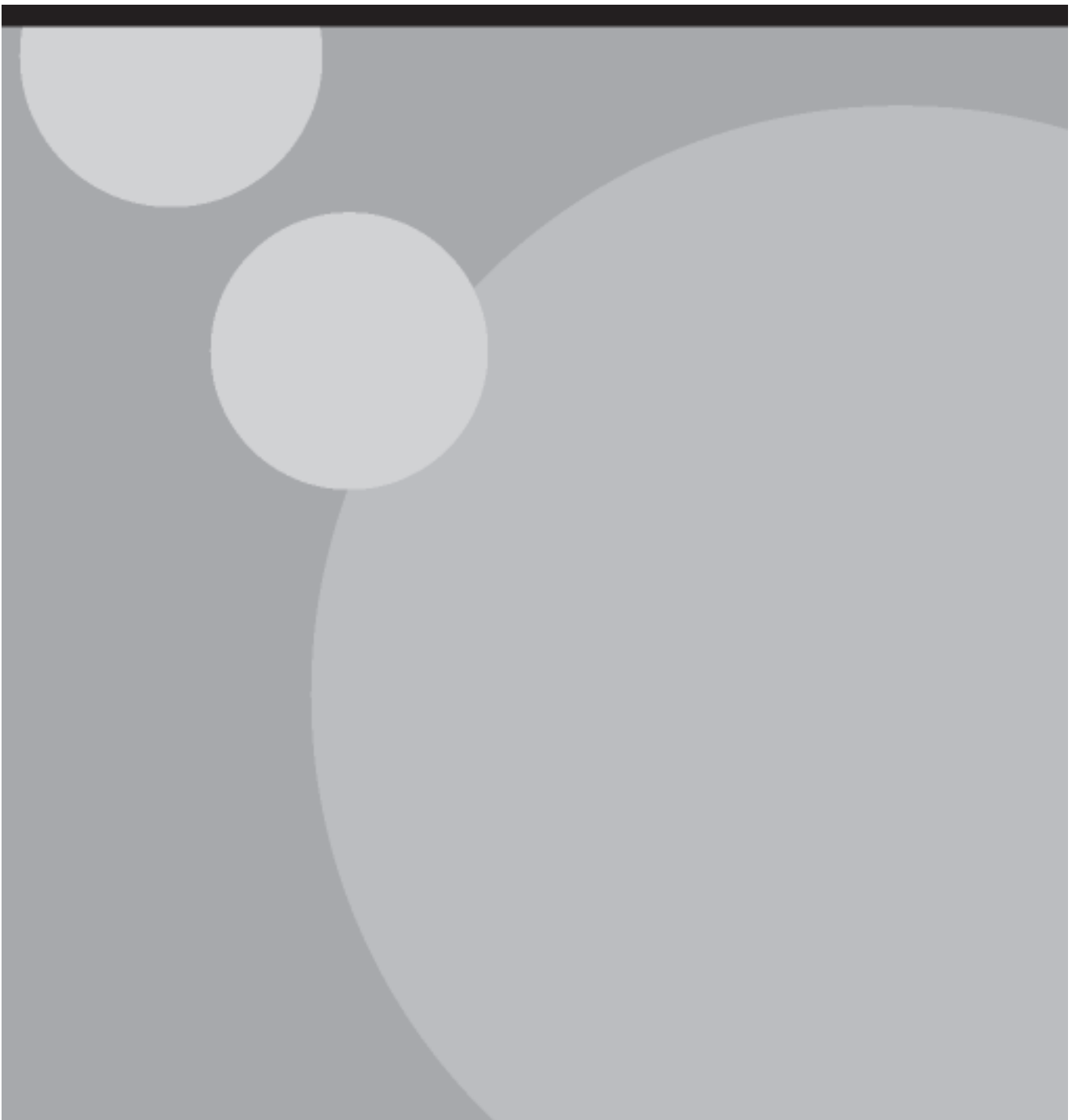




Tree preservation orders: proposals for streamlining **Consultation**





Tree preservation orders: proposals for streamlining

Consultation

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Contents

Consultation overview	4
Section 1: Introduction	6
Section 2: Consolidating the tree preservation order system	11
Section 3: Streamlining the system	13
Section 4: Draft impact assessment	20
Annex A: Draft regulations	21
Annex B: Draft impact assessment	39
Annex C: Consultation questions	57
Annex D: Consultation criteria	58
Annex E: Consultation response form	59

Scope of the consultation

Topic of this consultation	This consultation is about a proposal to consolidate legislation and streamline the tree preservation order (TPO) system. Please see Section 1 for an overview of the proposals.
Scope of this consultation	The key measures to be considered are: <ul style="list-style-type: none"> • the creation of a unified system for all TPOs • to shorten and simplify the model TPO
Geographical scope	The proposals in this document would apply to England only.
Impact assessment	A consultation stage impact assessment is being published with this consultation and can be found in Annex B.

Basic information

To	This consultation is aimed at: <ul style="list-style-type: none"> • amenity groups • arboricultural contractors and consultants • local planning authorities • owners of protected trees • solicitors and other professional advisers
Body/bodies responsible for the consultation	Department for Communities and Local Government (Planning Directorate).
Duration	Consultation opens 28 September 2010 and closes 20 December 2010.
Enquiries	If you have any questions about the content of the consultation please contact: tpo@communities.gsi.gov.uk Or: TPO Consultation Team 1/J5 Eland House Bressenden Place London SW1E 5DU
How to respond	Responses can be submitted using the form in Annex E to:

	<p>TPO Consultation Team 1/J5 Eland House Bressenden Place London SW1E 5DU</p> <p>or by e-mail: tpo@communities.gsi.gov.uk</p>
Additional ways to become involved	As the matters raised are mainly procedural this will be a written exercise.
After the consultation	<p>We will aim to publish a summary of responses to the consultation on the Department's website within three months of the closing date.</p> <p>Information on the Department's consultations is available from: www.communities.gov.uk/corporate/publications/consultations/</p>
Compliance with the Code of Practice on Consultation	The consultation complies with HM Government's Code of Practice on Consultation.

Background

Getting to this stage	Tree preservation orders were introduced in 1947. The current provisions are contained in the Town and Country Planning Act 1990 and The Town and Country Planning (Trees) Regulations 1999 (as amended by two later sets of regulations).
Previous engagement	Recommendations from previous reviews about the simplification of the tree preservation order system were not implemented due to the lack of suitable primary legislation. Provisions are now included in the Planning Act 2008 to enable regulations to be made to consolidate and simplify the existing legislation.

Section 1

Introduction

- 1.1 The Prime Minister has said that this government will be the greenest government ever. Measures for greening the environment are set out in the Coalition programme for government, including a national tree planting campaign. Safeguarding the trees already contributing to local amenity and character is important to the greener environment agenda.
- 1.2 The government is cutting through the red tape that adds cost and puts unnecessary burdens on individuals, business and local government. The proposals in this consultation paper reflect this ambition, while at the same time ensuring that tree protection remains as strong as before.
- 1.3 This consultation paper seeks views on proposals to consolidate the provisions currently contained in regulations and tree preservation orders (TPOs) in England into one universal set of new regulations. At the same time, we propose to introduce revisions to streamline the regime, reduce the administrative burden of the TPO system (particularly on local planning authorities) and make it a fairer system which is easier for tree owners to use.

Background

- 1.4 The TPO system has provided the principal regulatory means for protecting trees since 1947. Tree preservation orders are made and managed locally by the relevant local planning authority. The aim is to protect trees, largely those of amenity value to local communities, including but not exclusively those under threat from new development. Tree preservation orders prohibit the cutting down, uprooting, topping, lopping, wilful destruction or wilful damage of protected trees without the authority's consent.
- 1.5 Tree preservation orders mainly relate to trees on private property, including domestic gardens, and therefore can limit what landowners want to do with a tree or trees on their property. Over time, the TPO system has become cumbersome and fragmented as changes have been made that apply only to certain TPOs, depending on when they were made. Regulatory requirements are spread across primary and secondary legislation (including three sets of regulations) and the various TPO documents used since 1947. This labyrinth of regulation is hard to use and inconsistent in the safeguards it provides for tree owners.
- 1.6 This consultation does not change the level of protection provided to trees but consolidates and simplifies existing provisions. We do not want the process for making and administering TPOs to be any more

complicated or costly than it has to be, either for those affected by TPOs or their local council.

What we are proposing

- 1.7 Our aim is to consolidate TPO provisions and streamline certain procedures associated with TPOs in England only. Subsections 198(3), (4), (6), (8) and (9), and sections 199, 201, 203-205 of the Town and Country Planning Act 1990¹ (“the Act”) would be replaced in new regulations.
- 1.8 This consultation proposes to create, through a single set of regulations, one system which would apply to all TPOs (see paragraphs 2.9-2.11) by:
- replacing the Town and Country Planning (Trees) Regulations 1999² (the “1999 Regulations”) so far as they relate to England
 - replacing the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008³ and the Town and Country Planning (Trees)(Amendment No.2)(England) Regulations⁴ (the “2008 Regulations”)
 - reducing the size of all existing and future TPOs by retaining only the information that identifies the trees protected

Draft regulations are at Annex A.

- 1.9 The main changes proposed are:
1. Simplify all existing TPOs by bringing them into line with the new model order (see paragraphs 2.5-2.6).
 2. A new, shorter and easy-to-understand model order for all future TPOs - comprising a list of trees and a map identifying the trees protected (see paragraphs 2.7-2.8).
 3. Scrapping the requirement for a separate direction to provide urgent protection for threatened trees - by giving all new TPOs immediate provisional effect (see paragraphs 3.4-3.5).
 4. Reduced requirements on authorities to publicise new TPOs - to be limited to owners and occupiers of the land where the trees are situated and anyone else known to have the right to cut or fell the trees (see paragraphs 3.8-3.11).

¹ See section 192 of the Planning Act 2008.

² SI 1999, No.1982

³ SI 2008, No.2260

⁴ SI 2008, No.3202

5. Clarifying the exemptions for making an application for works to a protected tree - to remove ambiguity and reduce disputes between owners and local planning authorities (see paragraphs 3.14-3.15).
 6. Adopting one system for the duration of consents for works to protected trees and for the revocation of consents (see paragraphs 3.19-3.20).
 7. Increased local flexibility to provide consents for regular work to protected trees – to save the need for repeat applications from tree owners (see paragraph 3.21).
 8. Using conditions, rather than directions, to secure any necessary replacement planting in woodlands (see paragraph 3.24).
 9. Treating all owners of protected trees fairly by bringing all compensation provisions into line with the provisions in the 1999 Regulations - in particular closing the loophole which meant claims for compensation could be avoided by local planning authorities (see paragraphs 3.29-3.31).
- 1.10 Transitional arrangements are proposed in the draft regulations for TPOs which have not been confirmed and applications or appeals which have not been decided before the new regulations commence, or where compensation has been or may still be claimed on a decision made before the regulations commence. These new regulations are likely to be brought into effect in 2011.

How to respond

- 1.11 Questions on which we are seeking input are raised throughout this document. These are repeated at Annex C. We encourage you to use the Word format questionnaire associated with this consultation paper. Responses to this consultation must be received by Monday 20 December 2010.
- 1.12 You can respond to:

TPO Consultation Team
Communities and Local Government
Zone 1/J5
Eland House
Bressenden Place
London
SW1E 5DU

or by e-mail: tpo@communities.gsi.gov.uk

- 1.13 When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please give a summary of the people and organisations it represents and, where relevant, who else you have consulted in reaching your conclusions.

Additional copies

- 1.14 This consultation paper, complete with electronic response form, is available on the Communities and Local Government (CLG) website at www.communities.gov.uk
You may obtain a hard copy of this consultation paper from the address given at paragraph 1.12.

Confidentiality and data protection

- 1.15 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).
- 1.16 If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.
- 1.17 CLG will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.
- 1.18 Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Help with queries

- 1.19 Questions about the policy issues raised in the document can be sent to the addresses given at paragraph 1.12.

1.20 A copy of the consultation criteria from the *Code of Practice on Consultation* is at Annex D. Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

CLG Consultation Co-ordinator
Zone 8/J6
Eland House
Bressenden Place
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or by e-mail to: consultationcoordinator@communities.gsi.gov.uk

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

⁹ See article 5 of the Model Order included in the Town and Country Planning (Tree Preservation Order) Regulations 1969.

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

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

Annex A: Draft regulations

STATUTORY INSTRUMENTS

2011 No.

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (Tree Preservation) Regulations 2011

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - ***

CONTENTS

PART 1 GENERAL

- | | | |
|----|--|---|
| 1. | Citation, commencement and application | 2 |
| 2. | Interpretation | 3 |

PART 2 TREE PRESERVATION ORDERS

- | | | |
|-----|---|---|
| 3. | Form of tree preservation order | 3 |
| 4. | Provisional effect of order | 3 |
| 5. | Procedure after making an order | 4 |
| 6. | Objections and representations | 4 |
| 7. | Procedure for confirmation of a tree preservation order | 4 |
| 8. | Action after confirmation of tree preservation order | 5 |
| 9. | Action where tree preservation order not confirmed | 5 |
| 10. | Variation of tree preservation orders | 5 |
| 11. | Revocation of tree preservation orders | 6 |
| 12. | Register | 6 |

PART 3 PROHIBITED ACTIVITIES AND EXCEPTIONS

- | | | |
|-----|--|---|
| 13. | Prohibited activities | 6 |
| 14. | Exceptions | 7 |
| 15. | Trees in conservation areas – exceptions | 8 |

(2) These Regulations apply in relation to England only.

Interpretation

2.—(1) In these Regulations—

“authority” means a local planning authority making, or having functions under, an order;

“commencement” means the date on which these Regulations come into force;

“land affected by the order” means the land on which the trees, groups of trees or woodlands to which the order relates are situated;

“order” means a tree preservation order; and

“person interested” in relation to land affected by an order means every owner and occupier of the land and every other person whom the authority knows to be entitled—

(a) to cut down, lop or top any of the trees to which the order relates; or

(b) to work by surface working any materials in, on or under the land.

(2) Any reference in these Regulations to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990.

PART 2

TREE PRESERVATION ORDERS

Form of tree preservation order

3.—(1) An order shall be in the form set out in the Schedule to these Regulations or in a form substantially to the same effect and—

(a) shall specify the trees, groups of trees or woodlands to which it relates;

(b) where the order relates to a group of trees, shall specify the number of trees of each species in the group; and

(c) shall indicate the position of the trees, groups of trees or woodlands, as the case may be, by reference to a map.

(2) An order shall contain or have annexed to it the map referred to in paragraph (1)(c) and, where a map is annexed to an order, it shall be treated as part of the order.

(3) The map contained in, or annexed to, an order shall be prepared to a scale sufficient to give a clear indication of the position of the trees, groups of trees or woodlands to which the order relates.

Provisional effect of order

4.—(1) An order shall not take effect (other than provisionally in accordance with paragraph (2)) unless and until confirmed by the authority, and must be confirmed no later than the expiration of the period of six months beginning with the date on which it was made.

(2) Until confirmation an order shall take effect provisionally on the date on which it is made until—

(a) the expiration of a period of six months beginning with the date on which the order was made;

(b) the date on which the order is confirmed; or

(c) the date on which the authority decide not to confirm the order,

whichever first occurs.

Procedure after making an order

5.—(1) As soon as practicable after making an order, and before confirming it, the authority which made it shall—

- (a) serve on the persons interested in the land affected by the order—
 - (i) a copy of the order; and
 - (ii) a notice containing the particulars specified in paragraph (2); and
- (b) make a copy of the order available for public inspection, in accordance with paragraph (3).

(2) The particulars mentioned in paragraph (1)(a)(ii) are—

- (a) the reasons for making the order;
- (b) a statement that objections or other representations with respect to any trees, groups of trees or woodlands specified in the order may be made to the authority in accordance with regulation 6;
- (c) the date, being at least 28 days after the date of the notice, by which any objection or representation must be received by the authority; and
- (d) a copy of regulation 6.

(3) A copy of the order shall be made available for inspection, free of charge, at all reasonable hours, at the offices of the authority by whom the order was made; and where an order is made on behalf of an authority, it shall be made available for inspection also at the offices of the authority on whose behalf it was made.

Objections and representations

6.—(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 5(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 such objections and representations are made; and
- (c) in the case of an objection, shall state the reasons for the objection.

(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.

Procedure for confirmation of a tree preservation order

7.—(1) The authority shall not confirm an order which they have made unless they have first considered objections and representations duly made in respect of it and not withdrawn.

(2) An authority may confirm an order with or without modifications.

(3) Where an order is confirmed it shall be endorsed to that effect and the endorsement shall also indicate—

- (a) that the order was confirmed with modifications or without modifications, as the case may be; and
- (b) the date on which it was confirmed.

(4) Where an order is confirmed with modifications, the modifications shall be indicated in the order by distinctive type or other means.

(5) A modification under paragraph (2) may not add to the Schedule to the order (and the map) references to a tree to which the order did not previously apply.

Action after confirmation of tree preservation order

8. As soon as practicable after confirming an order, the authority which confirmed it shall—
- (a) notify the persons interested in the land affected by the order—
 - (i) of the confirmation of the order;
 - (ii) of the date on which the order was confirmed; and
 - (iii) of the time within which an application may be made to the High Court under section 284(a) (validity of development plans and certain orders, decisions and directions), and of the grounds on which such an application may be made;
 - (b) where the order was confirmed with modifications, send a copy of the order, as confirmed, to those persons; and
 - (c) make a copy of the order, as confirmed, available for public inspection, in place of the copy made so available in accordance with regulation 5, free of charge, at all reasonable hours, at the offices of the authority by whom the order was made; and where an order is made on behalf of an authority, it shall be made available for inspection also at the offices of the authority on whose behalf it was made.

Action where tree preservation order not confirmed

9. Where an authority decide not to confirm an order they shall as soon as practicable—
- (a) endorse the order with a statement to that effect and with the date of their decision;
 - (b) notify the persons interested in the land affected by the order of their decision; and
 - (c) withdraw from public inspection the copy of the order made available in accordance with regulation 5.

Variation of tree preservation orders

- 10.—(1) Where an authority vary an order they shall—
- (a) endorse the original order with a statement to the effect that the order has been varied, specifying the date on which the variation order takes effect;
 - (b) serve on the persons interested in the land affected by the variation order—
 - (i) a copy of the variation order; and
 - (ii) a statement explaining the effect of the variation order; and
 - (c) make a copy of the variation order available for public inspection, in accordance with regulation 5.

(2) Where an authority vary an order so as to add to the Schedule to the order (and the map) references to a tree to which the order did not previously apply, regulations 5(1)(a)(ii) and (2) and 6 to 9 shall apply to the variation order as they applied to the order, subject to the substitution, for references to persons interested, of references to—

- (a) persons who are the owners and occupiers of the land affected by the variation order; and
- (b) every other person whom the authority know to be entitled to cut down, lop or top the trees to which the variation order relates, or to work by surface working any minerals in, on or under that land.

(3) For the purpose of paragraph (1)(a) the date on which the variation order takes effect shall be the date on which the variation order is made, except that, where paragraph (2) applies, the date on

(a) There are amendments to section 284 but none is relevant to this regulation.

which the variation order takes effect shall be the date on which the variation order is confirmed under regulation 7(2).

(4) For the purpose of this regulation, “land affected by the variation order” means the land on which the trees, groups of trees or woodlands to which the variation order relates are situated.

Revocation of tree preservation orders

11. Where an authority revoke an order they shall—

- (a) endorse the original order with a statement to the effect that the order has been revoked, specifying the date of the revocation;
- (b) notify the persons interested in the land affected by the order that the order has been revoked; and
- (c) withdraw from public inspection the copy of the original order made available in accordance with regulation 5.

Register

12.—(1) Every authority shall keep a register containing the following information with respect to orders made by that authority—

- (a) details of every application under an order and of the authority’s decision (if any) in relation to each such application;
- (b) a statement of the subject-matter of every appeal under an order and of the date and nature of the Secretary of State’s determination of it; and
- (c) details of any conditions with respect to replanting attaching to any consent granted under regulation 17(1).

(2) Every register kept under this regulation shall be available for inspection by the public at all reasonable hours.

PART 3

PROHIBITED ACTIVITIES AND EXCEPTIONS

Prohibited activities

13. Without prejudice to subsection (7) of section 198(a) (power to make tree preservation orders) or subsection (1) of section 200(b) (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

- (a) cut down;
- (b) top;
- (c) lop;
- (d) uproot;
- (e) wilfully damage; or
- (f) wilfully destroy,

any tree to which an order relates, or shall cause or permit the carrying out of any of the activities in sub-paragraphs (a) to (f) to such a tree, except with the written consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

(a) Section 198(7) was amended by section 192(8) of, and paragraphs 7 and 8 of Schedule 8 to, the Planning Act 2008 (c. 29).
(b) Section 200 was substituted by section 85 of the Planning and Compulsory Purchase Act 2004 (c. 5) and subsection (1) was amended by section 192(8) of, and paragraphs 7 and 9 of Schedule 8 to, the Planning Act 2008.

Exceptions

14.—(1) Nothing in regulation 13 shall prevent—

- (a) the cutting down, topping, lopping or uprooting of a tree—
 - (i) which is dead;
 - (ii) in compliance with any obligation imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance;
 - (iii) by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary—
 - (aa) in the interests of the safe operation of the undertaking;
 - (bb) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker;
 - (cc) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995(a);
 - (iv) where that work is required to enable the implementation of an order made or confirmed under paragraph 8(1) or paragraph 15(1) of Schedule 1 to the Highways Act 1980(b) (procedures for making or confirming certain orders or schemes);
 - (v) where that work is urgently necessary for national security purposes;
 - (vi) where that tree is cultivated for the production of fruit in the course of a business or trade and such work is in the interests of that business or trade;
 - (vii) so far as such work is necessary to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (iii)(cc), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995, granted on an application under Part III of the Town and Country Planning Act 1990 (control over development), or deemed to have been granted (whether for the purposes of that Part or otherwise));
 - (viii) by or at the request of the Environment Agency to enable the Agency to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995; or
 - (ix) by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose “drainage body” and “drainage” shall have the same meanings as in section 72(1) of the Land Drainage Act 1991(c) (interpretation);
- (b) the removal of dead branches from a living tree;
- (c) to the extent that such works are urgently necessary in the interests of safety, the cutting down, uprooting, topping or lopping of a tree that has become dangerous;
- (d) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit; or
- (e) without prejudice to sub-paragraph (a)(ii), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989(d) (other powers etc of licence holders - felling and lopping of trees etc).

(2) In paragraph (1), “statutory undertaker” means any of the following—

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- (a) S.I. 1995/418; amended by the Utilities Act 2000 (c. 27), section 76(7). Relevant amending instruments are S.I. 1996/528, 2001/1149 and 2003/2155.
 - (b) 1980 c. 66.
 - (c) 1991 c. 59; these definitions were amended by the Environment Act 1995 (c. 25), sections 100(2) and 120, and Schedule 22, paragraphs 191 and 194.
 - (d) 1989 c. 29.

- (a) a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power;
- (b) a relevant airport operator (within the meaning of Part V of the Airports Act 1986^(a) (status of certain airport operators as statutory undertakers, etc));
- (c) the holder of a licence under section 6 of the Electricity Act 1989^(b) (licences authorising supply, etc);
- (d) a gas transporter;
- (e) an operator to whom the telecommunications code (set out in Schedule 2 to the Telecommunications Act 1984^(c)) applies;
- (f) a water or sewerage undertaker;
- (g) the Civil Aviation Authority, a body acting on behalf of that authority or a person who holds a licence under Chapter I of Part I of the Transport Act 2000^(d) (air traffic services);
- (h) a universal postal service provider in connection with the provision of a universal postal service.

Trees in conservation areas – exceptions

15.—(1) Section 211^(e) (preservation of trees in conservation areas) shall not apply to—

- (a) the cutting down, topping, lopping or uprooting of a tree—
 - (i) in the circumstances mentioned in regulation 14;
 - (ii) by, or on behalf of, the Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967^(f) or otherwise under their management or supervision; or
 - (iii) by, or on behalf of, a local planning authority;
- (b) the cutting down of a tree in accordance with a felling licence granted by the Forestry Commissioners under Part II of the Forestry Act 1967 (Commissioners' power to control felling of trees);
- (c) the cutting down of a tree in accordance with a plan of operations or other working plan approved by the Forestry Commissioners, and for the time being in force, under a forestry dedication covenant entered into under section 5 of the Forestry Act 1967^(g) (forestry dedication covenants and agreements) or under the conditions of a grant or loan made under section 1 of the Forestry Act 1979^(h) (finance for forestry);
- (d) the cutting down or uprooting—
 - (i) of a tree whose diameter does not exceed 75 millimetres; or
 - (ii) where carried out for the sole purpose of improving the growth of other trees, of a tree whose diameter does not exceed 100 millimetres; or
- (e) the topping or lopping of a tree whose diameter does not exceed 75 millimetres.

(2) For the purpose of this regulation—

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- (a) 1986 c. 31.
 - (b) Section 6 was amended by the Utilities Act 2000, section 30, by the Energy Act 2004 (c. 20) sections 89, 136, 145 and 197(9), Schedule 19, paragraphs 3 and 5, and Schedule 23, Part 1, and by the Climate Change Act 2008 (c. 27), section 79 and Schedule 8, paragraph 2.
 - (c) 1984 c. 12; *see* section 106 of the Communications Act 2003 (c. 21) (in force in part (*see* S.I.2003/1900 and 2003/3142) and otherwise coming into force on a date to be appointed).
 - (d) 2000 c. 38.
 - (e) Section 211 was amended by section 86 of the Planning and Compulsory Purchase Act 2004 (c. 5) and by sections 36 and 192(8) of, and paragraphs 34 and 36 of Schedule 2 and paragraphs 7 and 14 of Schedule 8 to, the Planning Act 2008 (c. 29).
 - (f) 1967 c. 10.
 - (g) Section 5 was amended by S.I. 1999/1747 and S.I. 2009/1307; there are other amendments not relevant to these Regulations.
 - (h) 1979 c. 21; section 1 was amended by S.I. 2000/746; there are other amendments not relevant to these Regulations.

- (a) where a tree has more than one stem at a point 1.5 metres above the natural ground level its diameter shall be treated for the purposes of paragraph (1)(d)(i) and (e) or paragraph (1)(d)(ii) as exceeding 75 millimetres or 100 millimetres respectively, if any stem when measured over its bark at that point exceeds 75 millimetres or 100 millimetres respectively; and
- (b) in any other case, the diameter of a tree shall be ascertained by measurement, over the bark of the tree, at a point 1.5 metres above the natural ground level.

PART 4

APPLICATIONS FOR CONSENT UNDER TREE PRESERVATION ORDERS

Applications for consent under tree preservation order

16.—(1) Subject to the following provisions of this regulation, an application for consent to the cutting down, topping, lopping or uprooting of any tree in respect of which an order is for the time being in force shall—

- (a) be made in writing to the authority on a form published by the Secretary of State for the purpose of proceedings under these Regulations;
- (b) include the particulars specified in the form; and
- (c) be accompanied, whether electronically or otherwise, by—
 - (i) a plan which identifies the tree or trees to which the application relates;
 - (ii) such information as is necessary to specify the work for which consent is sought;
 - (iii) a statement of the applicant’s reasons for making the application; and
 - (iv) appropriate evidence describing any structural damage to property or in relation to tree health or safety, as applicable.

(2) Where an application is made using electronic communication, the applicant shall be taken to have agreed—

- (a) to the use of such communication by the authority for the purposes of that application;
- (b) that the address for these purposes is the address incorporated into, or otherwise logically associated with, that application; and
- (c) that deemed agreement under this paragraph shall subsist until the applicant gives notice in writing—
 - (i) withdrawing any address notified to the authority for that purpose; or
 - (ii) revoking the deemed agreement,

and such withdrawal or revocation shall be final and shall take effect on the date specified by the person in the notice being not less than seven days after the date on which the notice is given.

Determination of applications for consent and conditions

17.—(1) Where an application is made to the authority for consent under an order in accordance with regulation 16 the authority may—

- (a) grant consent under the order, either unconditionally or subject to any such condition as is specified in paragraph (2); or
- (b) refuse consent under the order.

(2) The conditions referred to in paragraph (1) are—

- (a) conditions within subsection (4) of section 202D(a) (tree preservation regulations: consent for prohibited activities);
- (b) conditions requiring approvals to be obtained from the person giving the consent;
- (c) conditions specifying the standard to which the works for which consent has been given must be carried out; and
- (d) conditions specifying that the works may be carried out on multiple occasions or within a specified time period only or both.

(3) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

(4) Where consent is granted under paragraph (1)(a)—

- (a) such consent shall be valid for a period of one year beginning with the date of its grant; and
- (b) the works for which such consent is granted may only be carried out once,

unless otherwise stated in a condition within paragraph (2)(d).

(5) A grant of consent under paragraph (1)(a) shall (except so far as the consent otherwise provides) enure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

PART 5

APPEALS AND COMPENSATION

Application of Part 5 and interpretation

18.—(1) This Part applies in relation to every appeal—

- (a) under regulation 19 (“a tree preservation order appeal”); or
- (b) against a notice served under section 207(1)(b) (enforcement of duties as to replacement of trees) (“a tree replacement notice appeal”),

which is to be disposed of without a hearing or inquiry to which rules under section 9 of the Tribunals and Inquiries Act 1992(c) (procedure in connection with statutory inquiries) apply.

(2) In this Part—

“appointed person” means a person appointed by the Secretary of State under Schedule 6 to the Town and Country Planning Act 1990 to determine an appeal;

“parties” in relation to an appeal, means the appellant and the relevant authority;

“preliminary information” means the documents supplied by the relevant authority in accordance with regulation 20;

“questionnaire” means a document in the form supplied by the Secretary of State for the purposes of this Part; and

“relevant authority” in relation to an appeal, means the local planning authority that made the decision (including any failure to determine the application) or served the notice which is the subject of the appeal.

(a) Section 202D was inserted by section 192(1) and (7) of the Planning Act 2008.

(b) Section 207(1) was amended by section 192(8) of, and paragraphs 7 and 12 of Schedule 8 to, the Planning Act 2008.

(c) 1992 c.53; there are amendments to section 9 but none is relevant to these Regulations.

Appeals

19.—(1) Where the authority—

- (a) refuse an application for consent under an order or grant consent subject to conditions;
- (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under an order, or grant such an application subject to conditions; or
- (c) fail to determine any such application as is referred to in sub-paragraphs (a) and (b) within the period of 8 weeks beginning with the day after the date on which the application was received by the authority,

the applicant may by notice appeal to the Secretary of State.

(2) Any appeal under this regulation shall be made by notice in writing addressed to the Secretary of State and such notice shall be served—

- (a) in respect of a matter mentioned in paragraph (1)(a) or (b), within the period of 28 days from the receipt of notification of the authority's decision or such longer period as the Secretary of State may allow;
- (b) in respect of such a failure as is mentioned in paragraph (1)(c)—
 - (i) where the authority have informed the applicant that the application has been refused or granted subject to conditions before an appeal has been made, within the period of 28 days from the receipt of notification of the authority's decision or such longer period as the Secretary of State may allow; or
 - (ii) where the authority have not so informed the applicant, at any time after the expiration of the period mentioned in paragraph (1)(c).

(3) In the case of such failure as is mentioned in paragraph (1)(c) and where the authority have informed the applicant that the application has been refused or granted subject to conditions before an appeal has been made, an appeal may only be made against that refusal or grant.

(4) The appellant shall send to the relevant authority a copy of the notice of appeal, and shall do so at the same time as the appellant gives written notice to the Secretary of State of the tree preservation order appeal or tree replacement notice appeal, as the case may be.

(5) Schedule 6 to the Town and Country Planning Act 1990 (determination of certain appeals by person appointed by Secretary of State) applies to appeals under this regulation.

Preliminary information

20. The relevant authority shall, as soon as practicable after receiving notification of an appeal, send copies of the following to the Secretary of State—

- (a) in the case of a tree preservation order appeal—
 - (i) the application for consent, where relevant; and
 - (ii) the decision of the relevant authority, if any, including any condition made by the authority in relation to the decision;
- (b) in the case of a tree replacement notice appeal—
 - (i) the notice issued under section 207(1);
 - (ii) where the notice has been issued following a failure to plant replacement trees under a condition of consent, the original application and consent;
 - (iii) where the notice has been issued as a result of a contravention of these regulations within section 206(1)(a)(a) (removal, uprooting or destruction of tree in contravention of tree preservation regulations), the date of that breach, if not included in the notice; and

(a) Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008.

- (iv) where the notice has been issued as a result of a failure to replace a protected tree removed under the exemption in section 206(1)(b)(a) (dead or dangerous tree), the date of the alleged failure, if not included in the notice.

Questionnaire

21.—(1) The Secretary of State shall, as soon as practicable after receipt of the preliminary information, supply a questionnaire to the relevant authority.

(2) The relevant authority shall, within such period as the Secretary of State may specify in writing, being not less than 21 days from the date on which the questionnaire was supplied, submit to the Secretary of State and copy to the appellant a completed questionnaire and a copy of the documents referred to in that questionnaire.

(3) The questionnaire shall state the date on which it is submitted to the Secretary of State.

Further information

22.—(1) The Secretary of State or the appointed person (as the case may be) may in writing require the parties to provide such further information, including any representations, relevant to the appeal as the Secretary of State or the appointed person may specify.

(2) Such information must be provided in writing within such period as the Secretary of State or the appointed person may specify.

Determination

23.—(1) Where an appeal is made under regulation 19 the Secretary of State may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the Secretary of State in the first instance.

(2) Before determining an appeal under regulation 19 the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by an appointed person.

(3) Where under regulation 22, information is required to be provided within a specified period, the Secretary of State or the appointed person (as the case may be) may proceed to a decision on an appeal taking into account only such information as has been submitted within the specified period.

(4) Subject to paragraph (2), the provisions of regulations 17(1) and 17(3) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under regulation 19 as they apply in relation to an application for consent under regulation 17 which falls to be determined by the authority.

(5) The decision of the Secretary of State on an appeal shall be final.

(6) For the purposes of the application of paragraph (1) in relation to an appeal made under paragraph 19(1)(c), it shall be assumed that the authority decided to refuse the application in question.

(7) Where an appeal is made using electronic communications, the appellant shall be taken to have agreed—

- (a) to the use of such communications by the Secretary of State for the purposes of that appeal;

(a) For the meaning of “prescribed time” in section 206(1)(b), *see* regulation 25 below.

- (b) that the address for that purpose is the address incorporated into, or otherwise logically associated with, that appeal; and
- (c) that deemed agreement under this paragraph shall subsist until the appellant gives notice in writing—
 - (i) withdrawing any address notified to the Secretary of State for that purpose; or
 - (ii) revoking that deemed agreement,

and such withdrawal or revocation shall be final and shall take effect on the date specified by the person in the notice being not less than seven days after the date on which the notice is given.

Compensation

24.—(1) If, on a claim under this regulation, a person establishes that loss or damage has been caused or incurred in consequence of—

- (a) the refusal of any consent required under these Regulations;
- (b) the grant of any such consent subject to conditions; or
- (c) the refusal of any consent, agreement or approval required under such a condition,

that person shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

(2) No claim, other than a claim made under paragraph (3), may be made under this regulation—

- (a) if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
- (b) if the amount in respect of which the claim would otherwise have been made is less than £500.

(3) Where the authority refuse consent under these Regulations for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

(4) In any case other than those mentioned in paragraphs (2) or (3), no compensation shall be payable to a person—

- (a) for loss of development value or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- (c) for loss or damage reasonably foreseeable by that person and attributable to that person's failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
- (d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under these Regulations or the grant of any such consent subject to conditions.

(5) Subsections (3) to (5) of section 11 of the Forestry Act 1967^(a) (terms of compensation on refusal of licence) shall apply to the assessment of compensation under paragraph (3) as they apply to the assessment of compensation where a felling licence is refused under section 10 of that Act^(b) (application for felling licence and decision of Commissioners thereon), as if—

- (a) for any reference to a felling licence there were substituted a reference to a consent required under these Regulations; and
- (b) for the reference to the Commissioners there were substituted a reference to the authority.

(a) 1967 c. 10.

(b) There are amendments to section 10 but none is relevant to these Regulations.

(6) Claims for payment of compensation by virtue of paragraph (1) shall be made to and paid by the authority which made the order in question or, in the case of an order made by the Secretary of State, the authority named in the order.

(7) (a) This paragraph applies where—

- (i) an authority has granted consent under regulation 17(1) and (3) for felling in the course of forestry operations all or any part of a woodland area to which an order applies;
- (ii) such consent is granted subject to a condition under regulation 17(2)(a) requiring trees to be planted; and
- (iii) the Forestry Commissioners decide not to make a grant or loan under section 1 of the Forestry Act 1979(a) (finance for forestry) in respect of the planting required by such a condition as is mentioned in paragraph (ii) for the reason that such a condition frustrates the use of the woodland area for the growing of timber or other forest products for commercial purposes and in accordance with the rules or practice of good forestry;

(b) where this paragraph applies, the Forestry Commissioners shall, at the request of the person under a duty to comply with such a condition as is mentioned in sub-paragraph (a)(ii), give a certificate stating whether they have decided not to make such a grant or loan as is mentioned in sub-paragraph (a)(iii) and, if so, the grounds for their decision.

(8) Any question of disputed compensation under this regulation shall be referred to and determined by the Upper Tribunal(b).

(9) In relation to the determination of any such question, the provisions of section 4 of the Land Compensation Act 1961(c) (costs for proceedings of Upper Tribunal) and sections 22 (Tribunal Procedure Rules) and 29 (costs or expenses) of the Tribunals, Courts and Enforcement Act 2007 shall apply subject to any necessary modifications and to the provisions of these Regulations.

(10) This regulation shall not apply to orders to which regulations 26(3) or 26(4) apply.

(11) In this regulation—

“development value” means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and

“owner” has the meaning given by section 34 of the Forestry Act 1967(d) (meaning of “owner”).

PART 6

MISCELLANEOUS PROVISIONS

Prescribed time

25. The prescribed(e) time for the purposes of section 206(1)(b) (replacement of trees) and section 213(1)(b)(f) (enforcement of controls as respects trees in conservation areas) is whenever the cutting down or uprooting of a tree is authorised only by virtue of regulation 14(1)(a)(i) or 14(1)(c).

Revocation, transitional, transitory and saving provisions

26.—(1) The Town and Country Planning (Trees) Regulations 1999(g) (“the 1999 Regulations”), so far as they apply to England, the Town and Country Planning (Trees)

(a) 1979 c. 21; section 1 was amended by S.I. 2000/746; there are other amendments not relevant to these Regulations.

(b) Created under section 3 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(c) 1961 c. 33; section 4 was amended by S.I. 2009/1307.

(d) There are amendments to section 34 but none is relevant to these Regulations.

(e) For the meaning of “prescribed” see section 336(1) of the Town and Country Planning Act 1990.

(f) Section 213 was amended by section 192(8) of, and paragraphs 7 and 16 of Schedule 8 to, the Planning Act 2008.

(g) S.I. 1999/1892; amended by S.I. 2008/2260 and 2008/3202.

(Amendment) (England) Regulations 2008(a) and the Town and Country Planning (Trees) (Amendment No. 2) (England) Regulations 2008(b) are revoked except—

- (a) for regulation 17 of the 1999 Regulations (amendment of the Town and Country Planning General Regulations 1992); and
 - (b) so far as is necessary for the continuing application of orders to which paragraphs (2) to (4) apply, certificates to which paragraph (3)(b) applies and directions to which paragraph (5) applies.
- (2) (a) This paragraph applies to orders which—
- (i) at commencement have been made by an authority but not confirmed; and
 - (ii) do not include a direction by the authority that the provisions of section 201 (provisional tree preservation orders)(c) shall apply;
- (b) an order to which this paragraph applies shall not take effect unless and until confirmed by the authority, and must be confirmed no later than the expiration of the period of six months beginning with commencement.
- (3) (a) This paragraph and paragraph (4) apply to certain orders made by an authority prior to 2nd August 1999;
- (b) where, at commencement—
- (i) the provisions of paragraph (4)(a)(i) are satisfied;
 - (ii) a certificate was issued by the authority when refusing or granting consent subject to conditions certifying that the authority were satisfied that the refusal or condition is in the interests of good forestry or that the trees have an outstanding or special amenity value; and
 - (iii) that certificate is still in force,
- that certificate shall continue in force in spite of anything in these Regulations in accordance with the terms of the certificate for a period of 12 months following the date of grant or refusal.
- (4) Where, at commencement—
- (a) either—
 - (i) an application for consent to carry out works to a tree has been made and the authority have refused that consent or have granted consent subject to conditions; or
 - (ii) an appeal has been made to the Secretary of State—
 - (aa) against a decision of the authority such as is mentioned in paragraph (i); or
 - (bb) following a failure by the authority to determine any application for consent to carry out works to a tree within 8 weeks beginning on the date on which the application was received by the authority,and the Secretary of State has dismissed the appeal or has granted consent subject to conditions;
 - (b) the right to claim compensation in respect of that refusal, dismissal or grant has arisen; and
 - (c) either no claim for compensation has yet been made or a claim for compensation has been made but not yet determined,
- any such claim made prior to commencement or made within 12 months of the date of that refusal, dismissal or grant shall be dealt with in accordance with the provisions contained in that order and regulation 24 shall not apply to that claim.

(a) S.I. 2008/2260.

(b) S.I. 2008/3202.

(c) Section 201 was repealed by sections 192(1) and (4) and 238 of, and Schedule 13 to, the Planning Act 2008.

(5) Where, at commencement, a direction for replanting is in force, it shall continue in force until the expiry of that direction, in spite of anything in these Regulations.

Signed by authority of the Secretary of State

Name

Parliamentary Under Secretary of State

Date

Department for Communities and Local Government

SCHEDULE

Regulation 3(1)

Form of Tree Preservation Order

Town and Country Planning Act 1990

The [*title of Order (including year)*]

The [*name of Council*], in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

1. This Order may be cited as [*title of Order (including year)*].

Interpretation

- 2.—(1) In this Order “the authority” means the [*name of Council making the Order*].

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) Regulations 2011.

Effect

- 3.—(1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

- (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17 and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this [*insert date of Order*] day of [*insert month and year*]

[if the Council's Standing Orders require the sealing of such documents:]

[The Common Seal of [insert name of Council]

was affixed to this Order in the presence of—

.....]

[if the Council's Standing Orders do not require the sealing of such documents:]

[Signed on behalf of the [insert name of Council]

.....

Authorised by the Council to sign in that behalf]

[CONFIRMATION OF ORDER

[This Order was confirmed by the [insert name of Council] without modification on the [] day of [insert month and year]]

OR

[This Order was confirmed by the [insert name of Council], subject to the modifications indicated by [state how indicated], on the [] day of [insert month and year]]

[Signed on behalf of the [insert name of Council]

.....

Authorised by the Council to sign in that behalf]

[DECISION NOT TO CONFIRM ORDER

[A decision not to confirm this Order was taken by [insert name of Council] on the [] day of [insert month and year]]

[Signed on behalf of the [insert name of Council]

.....

Authorised by the Council to sign in that behalf]

[VARIATION OF ORDER

[This Order was varied by the [insert name of Council] on the [] day of [insert month and year] by a variation order under reference number [insert reference number to the variation order] a copy of which is attached]

[Signed on behalf of the [insert name of Council]

.....

Authorised by the Council to sign in that behalf]

[REVOCAATION OF ORDER

[This Order was revoked by the [insert name of Council] on the [] day of [insert month and year]]

[Signed on behalf of the [insert name of Council]

.....

Authorised by the Council to sign in that behalf]

SCHEDULE

Article 3

Specification of trees

Trees specified individually

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[T1]	[ash]	[complete if necessary to specify more precisely the position of the trees]

Trees specified by reference to an area

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[A1]	[trees (of whatever species) within the area marked A1 on the map]	[complete if necessary to specify more precisely the position of the trees]
[A2]	[the ash, beech, larch and oak trees within the area marked A2 on the map]	[complete if necessary to specify more precisely the position of the trees]

Groups of trees

(within a broken black line on the map)

<i>Reference on map</i>	<i>Description (including number of trees of each species in the group)</i>	<i>Situation</i>
[G1]	[2 ash trees, 3 birch trees and 3 oak trees]	[complete if necessary to specify more precisely the position of the trees]

Woodlands

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[W1]	[mixed hardwoods (mainly oak, ash and alder)]	[complete if necessary to specify more precisely the position of the trees]
[W2]	[mixed conifers and deciduous trees (mainly Scots pine and birch)]	[complete if necessary to specify more precisely the position of the trees]

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to England only, substantially revoke and replace the Town and Country Planning (Trees) Regulations 1999, to the extent to which they apply to England. They also revoke the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008 and the Town and Country Planning (Trees) (Amendment No. 2) (England) Regulations 2008.

Part 2 prescribes the form of tree preservation orders and the procedure for their making, provisional effect, confirmation, variation and revocation. The prescribed form is set out in the Schedule to the Regulations.

Part 3 of the Regulations sets out prohibited activities in relation to a tree protected by an order and exceptions. Under regulation 13 a tree protected by a tree preservation order may not be cut down, topped, lopped, uprooted or wilfully damaged or destroyed without the consent of the local planning authority, unless an exception applies. These exceptions are set out in sections 198(7) and 200(1) of the Town and Country Planning Act 1990, and in regulation 14 of the Regulations.

Section 198(7) provides exceptions relevant to section 39(2) of the Housing and Planning Act 1986 (c.63) (saving for effect of section 2(4) of the Opencast Coal Act 1958 (c. 69) on land affected by a tree preservation order despite its repeal) and section 15 of the Forestry Act 1967 (c.10) (licences under that Act to fell trees comprised in a tree preservation order).

Section 200(1) provides that a tree preservation order does not have effect in respect of anything done by or on behalf of Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967 or otherwise under their management or supervision or anything done by or on behalf of any other person under a plan of works approved by the Forestry Commissioners under a forestry dedication covenant (as defined in section 5 of the Forestry Act 1967) or under conditions of a grant or loan made under section 1 of the Forestry Act 1979 (c. 21).

Regulation 14 contains exceptions to the requirement for consent and regulation 15 contains exceptions for trees in conservation areas.

Part 4 of the Regulations prescribes the procedure for applications for consent under tree preservation orders.

Part 5 prescribes the procedure for appeals and for their determination. Regulation 19 grants a right of appeal in respect of a refusal to grant consent, a grant of consent subject to conditions or a failure to determine an application for consent within the prescribed time period. Regulation 24 provides for compensation claims, subject to exceptions, to be made where loss or damage has been incurred as a consequence of a refusal to grant consent, a grant of consent subject to conditions or a refusal of approval required under a condition.

Part 6 contains miscellaneous provisions. Regulation 25 provides that the prescribed time for the purposes of sections 206(1)(b) (replacement trees) and 213(1)(b) (enforcement of controls as respects trees in conservation areas) is whenever the cutting down or uprooting of a tree is authorised only by virtue of regulations 14(1)(a)(i) or 14(1)(c) (dead or dangerous trees).

Regulation 26 revokes the Town and Country Planning (Trees) Regulations 1999, the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008 and the Town and Country Planning (Trees) (Amendment No.2) (England) Regulations 2008, subject to transitional, transitory and saving provisions in respect of certain classes of order. This regulation also saves regulation 17 of the Town and Country Planning (Trees) Regulations 1999 (amendment to the Town and Country Planning General Regulations 1992).

Under section 193 of the Planning Act 2008 (c. 29), all tree preservation orders made prior to the date on which these Regulations come into force take effect with the omission of all of their provisions other than any that identify the order or identify the trees, groups of trees or woodlands to which the order applies.

A full impact assessment of the effect that this instrument will have on the costs of business, charities and the voluntary sector has been prepared in relation to this Order. The assessment has been placed in the Library of each House of Parliament and is annexed to the Explanatory Memorandum which is available alongside this Order on the OPSI website (which can be found at: <http://www.opsi.gov.uk/>). The assessment may also be accessed at www.communities.gsi.gov.uk/ and copies may be obtained from [] at the Department for Communities and Local Government, [] Eland House, Bressenden Place, London SW1E 5DU (telephone 030344 []).

Annex B: Draft impact assessment

<p>Title: Consolidating Tree Preservation Order Legislation</p> <p>Lead department or agency: Communities and Local Government</p> <p>Other departments or agencies:</p>	<p>IA No:</p> <p>Date: 09/09/2010</p> <p>Stage: Consultation</p> <p>Source of intervention: Domestic</p> <p>Type of measure: Secondary legislation</p> <p>Contact for enquiries: Peter Annett - 0303 444 1702</p>
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Summary: Intervention and options

What is the problem under consideration? Why is government intervention necessary?

Local planning authorities (authorities) protect trees in the interests of amenity by making tree preservation orders (TPOs). Provisions are spread across primary and secondary legislation and individual TPOs. Different rules apply to TPOs depending on when they were made. This has resulted in a cumbersome system and created inconsistencies (e.g. in relation to the extent of protection offered by individual TPOs). Tree owners are having difficulties understanding, and authorities administering, a bureaucratic system. Intervention is necessary to put a simpler, fairer system in place.

What are the policy objectives and the intended effects?

As part of the drive towards more streamlined processes, the objective is to produce a shorter, simpler TPO and to set out in new regulations a unified and common procedure which would govern all TPOs irrespective of their age. This will make TPOs easier for authorities to administer and simpler for owners and interested third parties to understand. These changes do not affect the level of protection of trees; important trees will continue to enjoy strong protection under planning legislation.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option A: Do nothing.

Option B: Amend primary legislation and consolidate existing regulations to simplify the TPO system.

Option B is preferred as it will streamline the legislation, save authority resources and increase clarity and fairness for tree owners. To do nothing would retain an inefficient and unnecessarily complex system, despite recognition over a number of years that simplification of the rules, which requires changes to primary legislation, would provide significant improvements. The Planning Act 2008 includes provisions to facilitate this option.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed
2016

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

No

Ministerial sign-off for consultation stage impact assessments:

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

A handwritten signature in black ink, appearing to read 'B. Min', is positioned above the date. The signature is fluid and cursive.

Signed by the responsible Minister:

Date: 28 September 2010

Summary: Analysis and Evidence: Policy Option 1

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: £4.3
COSTS (£m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low					
High					
Best Estimate	0		0		0
Description and scale of key monetised costs by 'main affected groups'					
Other key non-monetised costs by 'main affected groups' Small costs for authorities to advertise new rules.					
BENEFITS (£m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low					
High					
Best Estimate			£513,000		4,275,000
Description and scale of key monetised benefits by 'main affected groups' Saving of administration costs to authorities estimated to be approximately £513,000 per year.					
Other key non-monetised benefits by 'main affected groups' Eight other key issues have been identified but not monetised. These include introducing a new shorter model tree preservation order and qualifying the scope of exempted work. These will give greater clarity and reduce the administrative burden for tree owners, others affected by TPOs and authorities by virtue of operating within a simpler system.					
Key assumptions/sensitivities/risks					Discount rate (%)
The assumed savings to authorities are based upon a saving of three per cent of the total cost of administering the TPO service. The estimated total cost of the TPO service is between £15.5m and £18.8m. (ODPM (2003). The Planning Service: Costs and Fees)					

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: 0	AB savings: 0.51	Net: -0.51	Policy cost savings:	Yes

Enforcement, implementation and wider impacts

What is the geographic coverage of the policy/option?			England		
From what date will the policy be implemented?			06/04/2011		
Which organisation(s) will enforce the policy?			LPAs		
What is the annual change in enforcement cost (£m)?			£0		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: N/A		Benefits:
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro 0	< 20 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	No	No	No

Specific impact tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	12
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	17
Small firms Small Firms Impact Test guidance	No	17
Environmental impacts		
Greenhouse gas assessment	No	17
Wider environmental issues	No	17
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	17
Human rights Human Rights Impact Test guidance	No	17
Justice system Justice Impact Test guidance	No	17
Rural proofing Rural Proofing Impact Test guidance	No	17

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Sustainable development <u>Sustainable Development Impact Test guidance</u>	No	17
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Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Town and Country Planning Act 1990
2	Planning Act 2008
3	The Town and Country Planning (Trees) Regulations 1999 (SI 1999, No.1982)
4	The Town and Country Planning (Trees)(Amendment)(England) Regulations 2008 (SI 2008, No.2260)
5	The Town and Country Planning (Trees)(Amendment No. 2)(England) Regulations 2008 (SI 2008, No.3202)
6	ODPM (2003). <i>The Planning Service: Costs and Fees</i>
7	CLG (2008). <i>Trees in Towns II</i>

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	0	0	0	0	0	0	0	0	0
Total annual costs	0	0	0	0	0	0	0	0	0	0
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5
Total annual benefits	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Introduction

This impact assessment considers the consolidation and simplification of the provisions regarding tree preservation orders (TPOs). All existing TPOs will be amended and three current sets of regulations will be consolidated (using powers within sections 192 and 193 of the Planning Act 2008) into one new set to create a unified system that will apply to all TPOs.

Problem under consideration

Under the current system, local planning authorities (authorities) have powers to protect trees where it is expedient in the interests of amenity by making TPOs. Tree preservation orders are governed by provisions in the Town and Country Planning Act 1990, the Town and Country Planning (Trees) Regulations 1999 (SI 1999, No.1982), the Town and Country Planning (Trees)(Amendment)(England) Regulations 2008 (SI 2008, No.2260) and the Town and Country Planning (Trees)(Amendment No. 2)(England) Regulations 2008 (SI 2008, No.3202) as well as the provisions of the specific TPO, which will vary depending on when it was made.

Each TPO currently comes complete with its own set of rules on procedural matters such as appealing against the authority's decision and compensation for loss or damage arising from any refusal or condition. Once made, the TPO remains fixed, unless the authority uses its powers to vary it or to revoke and replace it with a new TPO. Any subsequent changes to the governing regulations which specify the provisions contained in the model TPO are not retrospective and apply only to new orders. So, depending on when a TPO was made will determine the details of the protection it provides and the nature of the processes in place to administer it.

Rationale for intervention

The resulting complex system is unfair as it includes different provisions and rights for the owners of protected trees. It also results in unnecessary burdens on authorities in the making and management of TPOs. It is appropriate to address this increasing problem by consolidating and streamlining the provisions of the TPO system to reduce the administrative burden, particularly on authorities. This will create a simpler, fairer system that will be more accessible to the tree owner and save authorities £.5m per annum in administration costs.

This proposal will affect the following sectors and groups:

- public sector (local planning authorities)
- tree owners (including business, voluntary sectors, charities and the public)
- third parties (including business, voluntary sectors, charities and the public)

Description of options considered

OPTION A: DO NOTHING

The option to do nothing will maintain the complex system and the inequalities that it contains.

- Authorities will continue to verify the specific provisions that apply to each TPO when they consider an application or possible infringement of the TPO. The Planning Inspectorate will also need to verify that rights of appeal are included in the original TPO when an appeal is made to the Secretary of State in relation to a refusal of consent or imposition of conditions.
- Authorities will still be required to copy new TPOs to third parties who may have no interest in the trees being protected. This is not considered to be a proportionate function.

- Understanding of implications of a TPO and the processes involved (as detailed in the Model Order) will not be improved. The opportunity to improve transparency and understanding of the TPO process will be missed.
- Inequalities in the system will remain to the advantage/disadvantage of tree owners, applicants and authorities.

OPTION B: AMEND PRIMARY LEGISLATION AND CONSOLIDATE EXISTING REGULATIONS AND SIMPLIFY THE TPO SYSTEM

This option will bring all TPOs onto the same footing and consolidate existing legislation into one new set of regulations. Wholesale change is not proposed, but in the process the TPO system will be streamlined. This will be achieved by:

1. Cancelling the provisions in every existing TPO (apart from the information identifying the trees protected) using section 193 of the Planning Act 2008. This will remove the inconsistencies that authorities and the Planning Inspectorate have to resolve and make a fairer system which is easier for tree owners and applicants to use. This action will bring all existing TPOs onto the same footing and allow one unified system to be introduced.
2. Consolidating existing legislation that deals with procedural matters for making and administering TPOs in one new set of regulations. This will produce one new set of enhanced provisions in The Town and Country Planning (Tree Preservation) Regulations 2011, which will apply to all TPOs whenever they were or will be made. 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):
 - i) The Town and Country Planning (Trees) Regulations 1999 (SI 1999, No.1982)
 - ii) The Town and Country Planning (Trees)(Amendment)(England) Regulations 2008 (SI 2008, No.2260)
 - iii) The Town and Country Planning (Trees)(Amendment No. 2)(England) Regulations 2008 (SI 2008, No.3202)
 - iv) subsections 198(3), (4), (6), (8) and (9), and sections 199, 201, 203-205 of the Town and Country Planning Act 1990.

The new regulations will simplify the protection of trees through the making of TPOs by consolidating and rationalising the provisions governing the system. The unified system created will apply to all existing and future TPOs and avoid the need, particularly for authorities, to verify the details of the protection or administrative procedures that apply to any one TPO.

3. The new regulations will:
 - i) include a new model form of TPO which will reflect the slimmer TPOs resulting from the omission of provisions from existing TPOs (see action (1)). (This will be easier for authorities to administer and the general public to understand),
 - ii) give all new TPOs immediate provisional effect (there will be no need to make a special direction as at present),
 - iii) reduce the administrative burden of authorities when notifying people of the making of new TPOs by requiring the service of copies only on the owner and occupier of the land on which the trees are situated and anyone else entitled to cut the trees,
 - iv) qualifying the scope of exempted works (particularly in respect of dead, dying and dangerous trees),
 - v) remove the power to vary or revoke a consent to carry out work to a tree protected by a TPO (this is rarely used and only applies to TPOs made before 2/8/99),

- vi) adopt one system, using conditions, to secure necessary replacement planting where consent is given to remove any tree protected by a TPO (so simplifying the system), and
- vii) provide a common system for compensation claims arising out of the refusal of consent or imposition of conditions.

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 TPOs in the interests of amenity. The proposed consolidation and streamlining will not change the level of protection provided to trees but will consolidate and simplify existing provisions. Neither does it create an incentive to protect more trees by making new TPOs.

Costs and benefits

COST SAVINGS FOR LOCAL PLANNING AUTHORITIES

There will be administrative savings from only having to apply one set of provisions and having to disseminate a shorter TPO document (e.g. two instead of 10 pages). No additional information will be required as authorities are already encouraged to provide some general information about TPOs when issuing a new order. Information is also available on the CLG website. The unified system should give rise to fewer legal queries; the complex nature of current TPOs means there is a wide scope for legal uncertainty.

Currently authorities are required to serve copies of new TPOs on all owners and occupiers of any land adjoining that on which trees protected by the proposed TPO stand. This requirement, introduced in 1999, has in some cases proved to be very onerous for authorities with limited benefit. The new regulations would provide a more focused and proportionate process of notifying affected parties so that only the owner and occupier of the land on which the trees stand and those who have a right to cut the protected trees receive a copy of the TPO.

There are many variables in making and serving a new TPO which make costings of any change complex. A TPO may include trees on a single property or many properties (sometimes over 50). Each property could be surrounded by three neighbouring properties or in the case of larger properties or woodlands, may have many neighbouring properties with some in multiple-occupancy. The number of copies of the TPO could therefore be quite large, possibly several hundred. Where a new TPO is made, using the current system, to protect trees on a single property it will usually need to be served on at least four people - the owner of the property on which the tree stands and adjoining owners. In extreme cases this could be up to 600 individual notices where each occupier of blocks of flats is notified.

Each new TPO currently consists, on average, of 10 pages of small print plus a map and covering notice. Notices are usually served by hand on the owner/occupier of the property on which the trees stand and by recorded delivery or normal post to all adjoining properties. In addition to the owner/occupier of the land on which the trees protected by the TPO stand, the new regulations propose that only those other people that the authority know to have a right to prune or fell the trees will receive a copy of a new TPO. This will usually be where the trees overhang an adjacent property. This will reduce the service burden of the authority.

Owing to the variables described above, it is only possible to offer a range of savings for the service of new TPOs. At the lower end, where the trees stand on a single property and do not overhang any adjacent property the savings will be fairly small. But where a TPO protects trees on a larger number of properties the savings will be more substantive.

This saving is difficult to quantify. Research undertaken for the Department, published as *Trees in Towns II* (CLG 2008) estimated that each authority makes on average about 17 new TPOs a

year, although there is great variability within authorities. In 2003-04, the latest year for which we have data, most authorities made less than 20 orders but a small number made over 100.

In Arup's 2003 fees research for England (ODPM: *The Planning Service: Costs and Fees*) the total cost of the tree protection service was estimated at £15.5m to £18.8m. It is estimated that the task of serving copies of new TPOs on the interested parties (currently the owner/occupier of the property on which the trees stand and any owner/occupier of land adjoining it) accounts for about 5 per cent of the costs of this stage of the process. The new regulations will only require new TPOs to be served on the owner/occupier of the property on which the trees stand and anyone else who has a right to prune or fell the trees protected.

From estimates of potential savings from the introduction of the proposed regulations (see Fig. 1) this more focused notification process will achieve savings for the authority of between 50 per cent and 65 per cent.

Figure 1: Estimated level of savings to LPAs for service of new TPOs			
Example scenario	Possible requirements under the current system	Possible requirements under the proposed system	Potential reduction in costs
Lower range: Where a TPO protects one tree on a single property	1 copy to the tree owner and 3 owners of adjoining property = 4 copies.	1 copy to the tree owner and 1 copy to owner over whose land the tree grows = 2 copies	50%
Upper range: Where a TPO is served on many trees on many (e.g.150) properties	150 copies to the tree owners and 450 copies to owners of adjoining property = 600 copies.	150 copies to the tree owners and 50 copies to owners of adjoining property = 200 copies.	65%

A saving of about 3 per cent of the total cost of the service would realise a potential saving of approximately £513,000 a year. This has been calculated from the estimated cost of serving copies of new TPOs - 5 per cent of the total cost of the tree protection service £17.1m (midpoint of Arup's range): 5 per cent of £17.1m = £855,000. And the potential saving of 60 per cent of the cost of serving copies of new TPOs: 60 per cent of £855,000 = £513,000.

Time savings for tree owners and third parties

The unified system will be more accessible, transparent and user-friendly. It should also be more robust in legal terms, presenting the effect of the TPO easier to understand without the need for professional assistance.

Costs

Notification of change

Local authorities are not required to notify people about this change. Tree preservation orders do not usually affect people until they wish to do something that affects a protected tree. At this stage they will need to contact the authority who can then refer them to the appropriate information. This information can also be provided by the tree work contractor or consultant. The authority may wish to promote the changes through other means e.g. issuing a press notice at minimal cost.

Other benefits and costs

The aspects of other streamlining described in 3 above (i.e. except 3(iii)) are not monetised because individually their financial costs and benefits are small. These are itemised in Figure 2. Collectively they will remove inconsistencies in the current system providing greater clarity for tree owners and authorities. They will remove ambiguity and grounds for dispute, resulting in a fairer and more transparent experience for tree owners and contractors. These matters will also reduce the bureaucracy for authorities and help to reduce their administrative burden.

Summary and implementation plan

The TPO system is currently complex and cumbersome. It is not fair as different rights and processes apply to different trees depending on when they were protected. The preferred option (Option B) will consolidate existing legislation and bring all TPOs under a unified, common system. Inequalities will be removed. Authority administrative burdens will be reduced and tree owners and applicants will have access to a streamlined and simpler system.

Regulations could commence in April 2011.

Figure 2: Costs and benefits of non-monetised matters			
Proposal	Paragraphs in consultation	Costs by group	Benefits by group
Bring all TPOs onto the same footing	2.5-2.6	None	All - One system applying to all TPOs, old and new. End users - Remove inconsistencies; fairer. LPAs - Remove checking of TPO provisions.
Create new shorter model TPO	2.7-2.8	None	End users - Remove 'small print' - easier to understand
All TPOs to have immediate effect	3.4-3.5	None	All - One system. Avoid loss of trees where prior notice of TPO given. LPAs - No separate direction required.
Clarify exemptions for dead and dying trees	3.15-3.16	All - More applications required but less investigation/enforcement	All - Remove ambiguity and reduce exploitation; greater clarity on when work requires an application or is exempt.
Create one system for duration of consents (default of 1 year) and varying/revoking consents	3.20-3.21	None	All - Creates certainty over duration of consent. End users - One system; fairer. CLG - Removes Secretary of State from revocation/ modification process.
Encourage applications for repeated or regular work	3.22	All - More consideration of long term management options	All - Fewer applications.
Provide for the use of conditions to require replacement trees in woodlands	3.23-3.25	None	All - Adopt a single system to require replacement planting.
Adopt 1999 Regs system for compensation	3.30-3.32	Comparative costs unknown. Only three appeals to Lands Tribunal in past 10 years. Number of claims received/settled by LPAs unknown	All - One system; more equitable system; limits of system defined. End users - LPAs cannot remove themselves from liability to pay compensation

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]</p> <p>It is proposed that a review of the effect of the regulations be carried out after five years.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>To assess whether the regulations have reduced the administrative burden for local planning authorities (authorities).</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>Seek views of those affected by the TPO system. The effect of the regulations will be felt by authorities (who administer the TPO system) and reflected in the experiences of others including tree owners, neighbours who have a right to cut the tree, the general public, tree work contractors and consultants. This light touch approach is considered proportionate to the scale of savings and costs of collecting new data.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Authority savings in making and serving TPOs. Greater understanding of TPOs by tree owners. Clearer provisions and less ambiguity.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>Data is not collected centrally. Data on the making and administration of TPOs would be available from local authorities when a review is carried out.</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p>

Annex 2: Equality Impact Assessment

Part 1: Screening

1	Consolidating and streamlining tree preservation order legislation	This is: <input type="checkbox"/> New policy/activity <input checked="" type="checkbox"/> A change to existing policy/activity <input type="checkbox"/> Existing policy/activity <input type="checkbox"/> A pilot programme or project
---	--	--

2 Screening undertaken by: Peter Annett	
Director or Deputy Director	Stephanie Hurst
Policy Developer/Lead	Peter Annett
Other people involved in the screening	

3	Brief description of programme, project , or policy:
<p>Local planning authorities (LPAs) protect trees in the interests of amenity by making tree preservation orders (TPOs). Current legislation requires TPOs to contain a great deal of detail (eg on a range of procedural matters) and different provisions apply to TPOs depending on when they were made. This creates anomalies (eg in relation to the extent of protection offered by TPOs). Their length and complexity make TPOs difficult for LPAs to administer and the public to understand. Intervention is necessary (by consolidating legislation and streamlining procedures) to put in place a unified system for TPOs.</p> <p>It is intended to make the system more efficient, more accessible and fairer for people who use these services as well as reduce the administrative burden on local authorities.</p> <p>As part of the drive towards a more streamlined process, the objective is to produce a shorter, simpler TPO and consolidate existing provisions in one new set of Regulations to deliver a unified system which would govern all TPOs irrespective of their age. It will remove existing inequalities. This will make TPOs easier for LPAs to administer and simpler for owners and interested third parties to understand. These changes do not affect the level of protection of trees.</p>	

4	Relevance to Equality and Diversity Duties
---	--

Does the policy have relevance to the department's:

- Race Equality Scheme?
- Disability Equality Scheme?
- Gender Equality Action Plan?
- Other (departmental or national) equality priorities?

Please explain:

How will these aims affect our duty to:

- Promote equality of opportunity?
- Eliminate discrimination?
- Eliminate harassment?
- Promote good community relations?
- Promote positive attitudes towards disabled people?
- Encourage participation of disabled people?
- Consider more favourable treatment of disabled people?
- Protect and promote Human Rights?

For example, think about the policy from the perspectives of different groups in society. Will the policy affect, positively or negatively, any group(s) differently to others? Will it differentially affect:

- Black, Asian or other ethnic minority and/or cultural groups?
- Disabled People?
- Women or men transgender people?
- Transgender people?
- Lesbians, gay men and/or bisexual people?
- Different religious communities/groups?
- Older people or children & young people?
- Any other groups?
- For policies affecting staff, those with flexible or agreed working patterns?

Are there any aspects of the policy, including how it is delivered, or accessed, that could contribute to inequalities? This should relate to all areas including Human Rights.

- Yes
- No

Please explain: The consolidation of existing provisions will ensure that everyone affected by a tree protected by a tree preservation order is subject to the same rules. Information on tree preservation orders will be available from local authorities and

CLG.

If you have indicated there is a negative impact on any group, is that impact:

Legal?

Yes

No

Please explain:

Intended?

Yes

No

Please explain:

5 Evidence Base for Screening

List the evidence sources used to make the screening assessment (i.e. the *known evidence*)

Partner engagement workshops and responses to the 2008 consultation *Tree Preservation Orders: Improving Procedures*.

Consider whether there are any significant gaps in the known evidence base and list here your recommendations for how those gaps will be filled.

6 Remembering the requirements of the equality duties:

- **Have 'due regard' to the 'elimination' of discrimination and harassment**
- **Promoting good community relations?**
- **Promoting positive attitudes towards disabled people**
- **Encourage participation of disabled people?**
- **Consider more favourable treatment of disabled people?**

- **Protect and promote Human Rights?**

Will there be/has there been consultation with all interested parties?

- Yes
 No

Please explain: Four workshops have been held with partners, including local authorities, businesses and tree owners. Public consultation will be undertaken on the proposals from September to December 2010. Specific approaches to all equalities groups are not proposed.

Are proposed actions necessary and proportionate to the desired outcomes?

- Yes
 No

Please explain: The proposals will remove existing inequalities in the how tree owners in general are affected by tree preservation orders. The new unified system will ensure consistency and equality in the application and administration of tree preservation orders by local planning authorities

Where appropriate, will there be scope for prompt, independent reviews and appeals against decisions arising from the proposed policy?

- Yes
 No

Please explain: The current fast-track appeals process against refusal of consent or imposition of conditions will continue.

Does the proposed policy have the ability to be tailored to fit different individual circumstances?

- Yes
 No

Please explain: Applications and appeals can be made by tree owners or people affected by trees protected by a tree preservation order, or by an agent acting on their behalf.

Where appropriate, can the policy exceed the minimum legal equality and human rights requirements, rather than merely complying with them?

- Yes
 No

Please explain: The proposals are to consolidate and simplify existing provisions and remove identified inequalities. The nature of this policy does not seek to provide other

benefits.

From the known evidence and strategic thinking, **what are the key risks (adverse impacts) and opportunities (positive impacts & opportunities to promote equality) this policy might present?**

	Risks (Negative)	Opportunities (Positive)
Race	-	-
Disability	-	-
Gender or Gender identity	-	-
Sexual Orientation	-	-
Age	-	-
Religion/Belief	-	-
Human Rights	-	-
For policies affecting staff, those with flexible or agreed working patterns	-	-

7 Proportionality

Describe the scale and likelihood of these risks and opportunities:

The proposed consolidation and simplification is designed not only to assist local planning authorities in their administration of tree preservation orders, but to provide an accessible and proportionate improvement to the protection of important trees.

8 Decision

Set out the rationale for deciding whether or not to proceed to full impact assessment (refer to guidance notes)

From the assessment of the impact of this policy on equalities groups it is considered that:

- Different groups will not be disadvantaged.
- There is no evidence that any part of the policy will discriminate against people from different equality groups.
- The policy does not favour any one group or deny opportunities to another.
- Access and clarity will be enhanced.

For these reasons it is not considered that a full impact assessment is required.

Annex 3: Specific Impact Tests

Race, disability, gender and other equality

We have undertaken an equalities screening and found no impact as a result of this proposal. (See Annex 2)

Competition assessment

There is no impact on competition from this proposal.

Small firms' impact test

There is no impact on small firms from this proposal; this was verified through partner engagement.

Greenhouse gas assessment

This proposal will not lead to increased carbon and other green house gas emissions.

Wider environmental issues

This proposal has no effect on the environment. These changes do not affect the level of protection for trees. Important trees will continue to enjoy strong protection under town and country planning legislation.

Health and well-being

There are no detrimental health impacts from this proposal.

Human rights

We do not expect a negative impact on human rights from this proposal.

Justice system

There will be no impact on the justice system or legal aid from this proposal.

Rural proofing

We do not expect this proposal to have a negative impact on rural areas. Stakeholders broadly support the proposals.

Sustainable development

This proposal will not have negative economic, environmental or social impacts and will not have a negative impact on future generations.

Annex C

Consultation questions

The questions on which we would particularly like your views are repeated below.

- Q.1. Will the proposal to consolidate legislation and introduce one system for TPOs benefit tree owners and local planning authorities?
- Q.2. Will bringing all existing and future TPOs into the same shorter format be clearer for tree owners and help local planning authorities?
- Q.3. Is the proposed provisional protection helpful to local planning authorities and, given the interests of tree owners, fair and reasonable?
- Q.4. Is the proposed minimum notification of new or varied TPOs targeting the right people?
- 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?
- 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?
- Q.7. Is a default period of one year for the duration of consents reasonable?
- Q.8. Will the opportunity to consider repeated operations, or programmes of work, assist tree owners in their management of protected trees?
- Q.9. Is the proposed change to secure planting of replacement trees in woodlands by conditions reasonable?
- Q.10. Are the proposed changes with regard to compensation fair and reasonable?
- Q.11. Do you have any further comments to make about the draft regulations?
- Q.12. Do you have any general comment of the outcomes predicted in the impact assessment, particularly about the costs and benefits?
- Q.13. Are there any benefits to the 'do nothing' option of not consolidating regulations and creating a unified system for TPOs?

Annex D

Consultation criteria

This consultation document and consultation process have been planned to adhere to the *Code of Practice on Consultation* issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the consultation.
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The complete code is available at:

www.berr.gov.uk/policies/better-regulation/consultation-guidance

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

Name:	
Organisation:	
Address:	
E-mail address:	

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	
	No	
Explanation/comment:		
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	
	No	
Explanation/comment:		

Section 3: Streamlining the system		
<i>Provisional effect of a TPO</i> Q.3 Is the proposed provisional protection helpful to local planning authorities and, given the interests of tree owners, fair and reasonable?	Yes	
	No	
Explanation/comment:		
<i>Informing interested parties</i> Q.4 Is the proposed minimum notification of new or varied TPOs targeting the right people?	Yes	
	No	
Explanation/comment:		
<i>Exceptions to the need for obtaining consent</i> 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?	Yes	
	No	
Explanation/comment:		

Consents		Yes	
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	
Explanation/comment:			
Q.7		Yes	
Is a default period of one year for the duration of consents reasonable?		No	
Explanation/comment:			
Q.8		Yes	
Will the opportunity to consider repeated operations, or programmes of work, assist tree owners in their management of protected trees?		No	
Explanation/comment:			

Planting replacement trees	Yes	
Q.9 Is the proposed change to secure planting of replacement trees in woodlands by conditions reasonable?	No	
Explanation/comment:		
Compensation	Yes	
Q.10 Are the proposed changes with regard to compensation fair and reasonable?	No	
Explanation/comment:		
General	Yes	
Q.11 Do you have any further comments to make about the draft regulations?	No	
Comment:		

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	
	No	
Explanation/comment:		
Q.14 Are there any benefits to the 'do nothing' option of not consolidating regulations and creating a unified system for TPOs?	Yes	
	No	
Explanation/comment:		

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