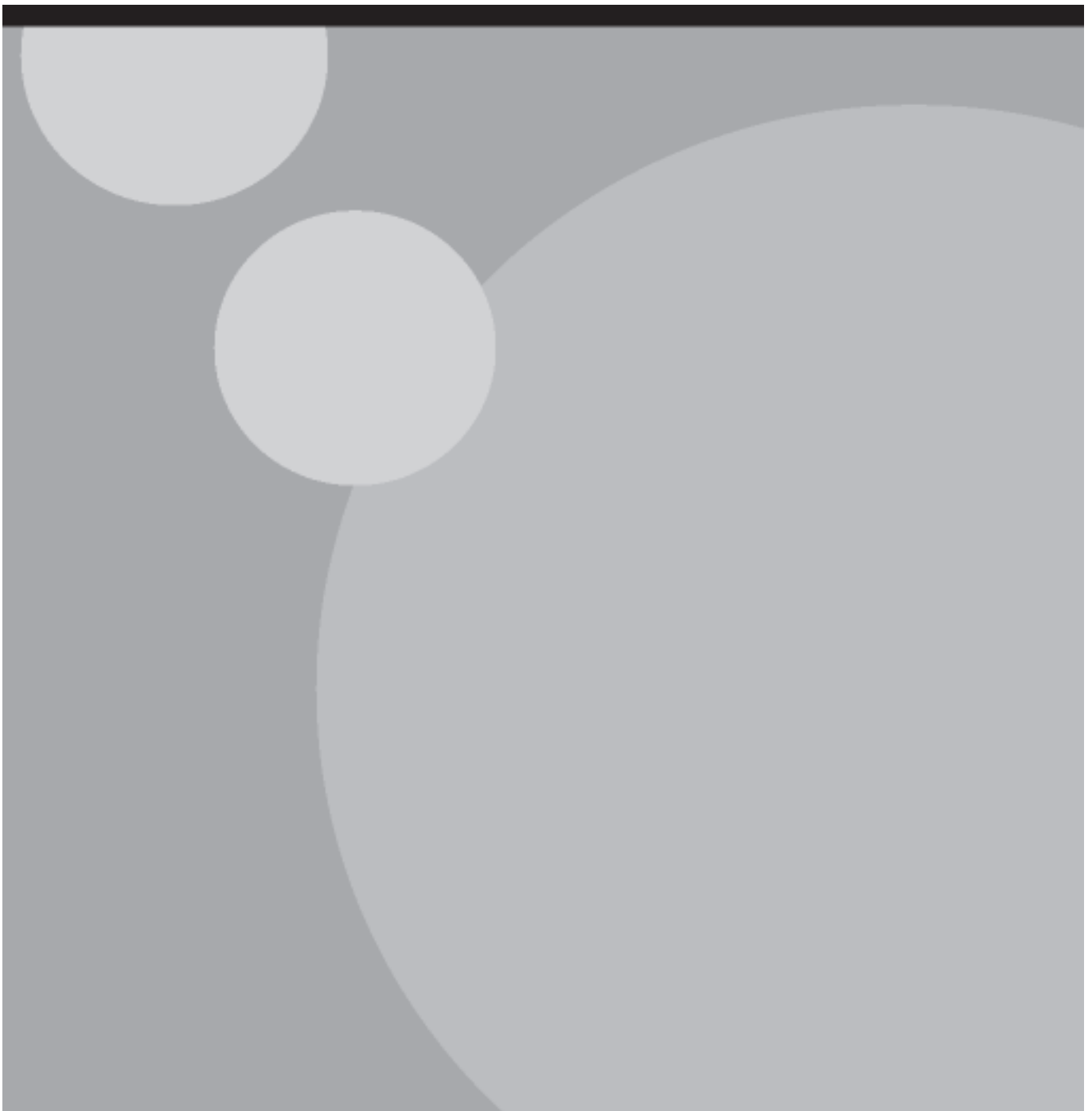




Tree preservation orders: proposals for streamlining

Government response to the consultation





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Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

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1. Introduction

1.1 In September 2010, the Government published a consultation paper on its proposals to consolidate the regulations supporting tree preservation orders and streamline the system in England.

1.2 The consultation paper was published on the Communities and Local Government website and drawn to the attention of a wide range of bodies by means of e-mail and letter. The consultation exercise ran for 12 weeks from 28 September 2010 until 20 December 2010. Respondents were encouraged to complete and return a form setting out the questions listed in the consultation paper. 246 responses were received. Table 1 shows respondents by broad category in descending order of the number of responses. In addition, there were about 2,700 similar responses in agreement with specific issues raised by the Woodland Trust (see paragraph 3.13).

Table 1: Respondents by broad category

Broad respondent type	Number of respondents	Percentage (%) of total
Local government	141	57
Individuals (including a number of local authority tree officers responding in a personal capacity)	30	12
Public or private companies	26	11
National representative bodies or organisations	26	11
Local organisations	16	6
Government agencies	7	3
Total	246	100

2. Policy background and purpose of proposals

2.1 The Government is cutting through red tape that adds costs and puts unnecessary burdens on individuals, business and local government. The proposals in the consultation paper reflected this ambition, while at the same time ensuring that tree protection remains as strong as before.

2.2 The tree preservation order system provides the principal regulatory means for protecting trees. Local planning authorities ('authorities') make and manage tree preservation orders ('orders') to protect selected trees and woodlands, largely those of amenity value to local communities. Orders prohibit the cutting down, uprooting, topping, lopping, wilful destruction or wilful damage of protected trees without an authority's consent.

2.3 The consultation proposed to create, through a new single set of regulations, one consolidated system that would apply to all orders by:

- replacing the Town and Country Planning (Trees) Regulations 1999 (No.1982) (the "1999 Regulations") so far as they relate to England
- replacing the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008 (No.2260) and the Town and Country Planning (Trees)(Amendment No.2)(England) Regulations (No.3202) (the "2008 Regulations")
- reducing the size of all existing and future tree preservation orders by retaining only the information that identifies the trees protected, and
- moving subsections 198(3), (4), (6), (8) and (9), and sections 199, 201, 203-205 of the Town and Country Planning Act 1990 ("the Act") to the new regulations.

2.4 The new regulations would create one system that would apply to every tree preservation order, existing or proposed. They would also include a new model order. The new regulations, entitled the *Town and County Planning (Tree Preservation) (England) Regulations 2012*, were laid on 5 March 2012.

3. Consultation questions and responses

Consolidation of the tree preservation order system

Remove the inconsistencies from all tree preservation orders

Q1. *Will the proposal to consolidate legislation and introduce one system for tree preservation orders benefit tree owners and authorities?*

3.1 95% of consultees who responded to this question agreed. In particular, respondents welcomed the opportunity to replace the existing fragmented system (described as complex, confused and cumbersome) with a single system. Specific

comments identified advantages of the consolidation in helping to cut red tape and produce greater consistency and transparency for all using the system. The greater clarity that would be provided would help when giving advice to tree owners and applicants and for authorities in administering and enforcing tree preservation orders.

Q2. *Will bringing all existing and future tree preservation orders into the same shorter format be clearer for tree owners and help local planning authorities?*

3.2 95% of consultees who responded to this question agreed that reducing the length of all existing and future tree preservation orders would be beneficial, particularly to the owners of trees protected by the orders. They suggested that the documentation received by tree owners did not present a user-friendly face of the tree preservation order system. Rather it was felt that existing orders were long-winded and bureaucratic, and appeared daunting and confusing to those not familiar with the detail of the legislation. As such the content may not be read or understood by recipients, but may frighten or confuse. The consistency provided by the shorter format was seen to simplify a complex document and make it less intimidating, resulting in greater clarity - making it easier to understand particularly by members of the public. However, some respondents commented that while the slimmed down order would make administration of the tree preservation order system easier, the direct savings for authorities would be limited.

3.3 5% of consultees who responded to this question disagreed with the proposal. Some suggested it was too ambitious and should be phased in with a review of existing orders. There was also comment that the process would legitimise deficiencies in existing orders.

3.4 General comments included the need to provide supporting information to inform owners of trees and other interested people about any changes to existing orders. Some also considered it important that recipients of new orders should receive up to date information. The Department was encouraged to update the leaflet entitled *Protected trees: a guide to tree preservation procedures*.

Streamlining the system

Immediate protection from a tree preservation order

Q3. *Is the proposed provisional protection helpful to authorities and, given the interests of tree owners, fair and reasonable?*

3.5 It was clear from the responses that this proposal reflected the current practice of authorities to make tree preservation orders using s201 directions so that new orders had immediate provisional effect. 93% of consultees who responded to this question agreed and 7% disagreed. Respondents generally felt that six months was an appropriate period for authorities to consider objections and confirm the order. However, some comment was received suggesting that there may be a case to continue the current practice of being able to confirm these 'provisional' orders

after the six months had expired, even though the protection of the trees included would lapse temporarily. This was referred to specifically in respect of orders made alongside proposals for development where discussions on tree selection and site layout may take more than six months to conclude and where a premature decision on the inclusion of some trees in an order may be premature. An alternative approach was suggested whereby new orders would have immediate effect and would be confirmed by default unless objections were made within 6 months. There was also some support for authorities to serve copies of new orders within a specified timeframe and to confirm whether an order had or had not been confirmed, or had lapsed.

Informing interested parties

Q4. *Is the proposed minimum notification of new or varied tree preservation orders targeting the right people?*

3.6 Many respondents, both those that agreed with the proposal and those that disagreed, acknowledged that the existing requirements introduced in 1999 were onerous and needed revising. They supported a more focussed approach in the notification of people of new or varied orders. 79% of consultees who responded to this question agreed that the proposals as drafted were appropriate and targeted the right people, by formally serving the orders on those who had rights to work on the trees protected. The 21% who disagreed suggested a broader audience should be informed, either formally by service of the order or informally by using a site notice or letter.

3.7 In identifying the people who might be entitled to cut the trees protected and so be required to receive a copy of the order, some respondents suggested that this should include neighbours whose property might be affected by overhanging branches in the future. Some stressed that rights to cut roots growing under neighbouring property existed as well as overhanging branches.

3.8 Local authorities in particular stated that the proposals would reduce their administrative burden and in some cases it was suggested that the proposals would achieve substantial savings. The new process would also avoid unnecessary service of copies of orders, which sometimes generated negative feedback from recipients.

3.9 Allowing authorities the discretion to identify additional people to notify about the making of orders was welcomed. Some thought that new orders should be copied to more people, while others felt that the proposed discretion allowed them sufficient flexibility to consider the needs of each situation. Respondents disagreeing with the proposal suggested several parties that would benefit from notification. These included town and parish councils, residents groups, agents and tree wardens.

Exceptions to the need for obtaining consent

Q5. *Are the proposals to remove the current exemption for work to dying trees and limiting work to dangerous trees useful clarification, and reasonable?*

3.10 Mixed views were expressed about the various elements of this proposal, ranging from scrapping all exceptions to leaving things as they are. 86% of consultees who responded to this question supported the removal of dying trees from the list of exceptions while 14% objected. Many noted the ambiguity presented to tree owners, contractors and authorities by the current exception. A small number of comments recorded the benefits to veteran and ancient trees. However, there was some comment that the move would result in more applications and that replacement planting would no longer be enforceable in a conservation area - as replanting can only be required if trees are removed under an exemption or where felling has been carried out in breach of the conservation area protection.

3.11 81% of consultees who responded to this question supported the qualification of works to dangerous trees with 19% opposing the proposal. There were common calls across all respondents for guidance to be available for authorities and tree owners on how options for work should be decided, particularly where complete removal would be the most pragmatic solution. It was suggested that this could increase costs for the tree owner where the minimum work was carried out under the exception followed later by felling with the authority's consent, instead of carrying out the work in one go. Calls were made to tighten up the wording of the exception to help it reduce abuse and the incidence of excessive, damaging or unjustified work.

3.12 Respondents also commented on the retention of dead trees as an exception and the introduction into the exceptions in the draft regulations of the removal of dead branches from living trees. Several respondents promoted the value of deadwood (both branches and trees) as a habitat and sought special consideration of veteran and ancient trees where the exceptions prevented their effective protection under the tree preservation order system. Some respondents suggested that there was a need to educate those who were unaware of the value of deadwood in general, not just in respect of protected trees.

3.13 The Woodland Trust and Ancient Tree Forum encouraged responses on this matter. This resulted in nearly 2700 emails in agreement with their opposition to the exceptions regarding dead trees and branches. The emails drew attention to initiatives to promote biodiversity and the role of dead and decaying wood in this context. They also called attention to the visual and other amenity value of dead trees and branches, advocating that a protected tree which has significant habitat or heritage value be retained for as long as is reasonably possible. Calls were also made for prior notice of excepted works to be given to the authority.

Consents

Q6. *Do you agree that the power to vary or revoke consents for work under tree preservation orders made before 2 August 1999 should be removed?*

3.14 94% of consultees who responded to this question agreed with this proposal; the remaining 6% did not. There was very little comment made, apart from the fact that nearly a third of all authorities responding had never used this power and it was felt that its removal would provide a more consistent approach. Six authorities suggested revoking all old consents automatically when the new regulations commenced. A similar number sought powers to make minor amendments where the authority and the applicant agreed them.

Q7. *Is a default period of one year for the duration of consents reasonable?*

3.15 Setting a default duration (to ensure the works remained appropriate) was widely supported and about half of respondents agreed with one year. However, over a third (including the majority of responding local authorities) suggested that two years would provide a more flexible period for tree owners to organise the approved work and reduce repeat applications, thereby reducing bureaucracy and also be in line with the two year period within which work in a conservation area could be carried out. Other suggestions ranged from 6 months to 5 years.

Q8. *Will the opportunity to consider repeated operations, or programmes of work, assist tree owners in their management of protected trees?*

3.16 95% of consultees who responded to this question supported greater flexibility to consider repeated operations or programmes of work. The main comments, presented by both those for and against, were that there would be a need for careful drafting of applications and decisions and that monitoring of such consents would be essential to avoid abuse of consents and ensure that trees were not over-pruned. Respondents sought further guidance.

Planting replacement trees

Q9. *Is the proposed change to secure planting of replacement trees in woodlands by conditions reasonable?*

3.17 94% of consultees who responded to this question supported the proposal to consolidate the two systems to ensure replacement planting was carried out where consent was granted to remove trees. It was felt that using conditions for all replacement planting would provide a flexible, consistent and robust approach, which would be fit for purpose and provide greater clarity. The 6% who did not support the idea commented that it would dilute local government powers and be too flexible.

Compensation

Q10. *Are the proposed changes with regard to compensation fair and reasonable?*

3.18 There was general support for the principle of a single compensation system. 84% of consultees who responded to this question supported the proposed changes. However 16%, including a substantial proportion of local government consultees, disagreed with the proposed changes.

3.19 11 respondents considered that “article 5 certificates” should continue, while a similar number of local government consultees stated that they rarely or never used them. Rather than stop their use, some respondents suggested that guidance to strengthen their application would be a more constructive approach.

3.20 Comments included that larger claims for compensation tended to be those related to alleged subsidence damage to buildings and would be expensive for local authorities, particularly in the current financial climate. Some respondents commented that, where on balance there might be a risk of losing a claim for compensation, authorities would grant consent for the works proposed. Some respondents also commented that by stopping the use of “article 5 certificates”, which were designed to protect trees of special and outstanding value, we would lose some of our best trees. However, other respondents suggested that, by promoting the provision of good information with applications for tree work, authorities would be able to make more confident and robust decisions.

3.21 Other comments included proposals to increase the threshold of claims from £500 to £1,000 or link it to inflation; to remove or extend the time limit within which claims could be made; and to exclude all claims apart from buildings.

Other comments

Q11. *Do you have any further comments to make about the draft regulations?*

3.22 The highest number of comments received sought updated guidance and information. Respondents also commented about the apparent lack of reference to the area classification in the regulations, apart from in the model order, and uncertainty as to whether they were going to be continued.

3.23 Other comments/suggestions included (in descending order of the number of responses):

- The terms “lopping” and “topping” should be updated with more contemporary terminology
- Strengthen enforcement e.g. by increasing fines and introducing an offence for not complying with a tree replacement notice
- Strengthen the offence of wilfully destroying

- Review the protection of trees in conservation areas and consider introducing a power to impose conditions for replacement planting
- Automatically protect trees planted in compliance with a condition attached to a tree preservation order consent
- Several suggestions to improve the standard application form
- Require authorities to make tree preservation order information available on the internet in accordance with the *Trees – e-Service Delivery Standards*¹
- Make it clear that roots as well as branches should not be cut without consent
- Review the exception relating to prevention or abatement of a nuisance
- Require authorities to review old tree preservation orders or those which contain areas
- Clarify the criteria relating to amenity and the selection of trees that can be protected by a tree preservation order
- Undertake a more fundamental review of the tree protection regimes
- Encourage a more strategic approach to the selection of trees for protection

Draft impact assessment

Q12. *Do you have any general comment of the outcomes predicted in the impact assessment, particularly about the costs and benefits?*

3.24 Over a third of respondents who responded to this question commented on the draft impact assessment. About half of them agreed that there would be savings by implementing the proposals (Option B), although some of these thought that savings would be less than calculated. The improved transparency, clarity and consistency of the process proposed in the draft regulations were seen by some to be more important than any direct financial savings.

3.25 A few respondents commented that there would be an increase in compensation claims because of the removal of the “article 5 certificate”. The proposal to review the effect of the regulations in 5 years was welcomed. A small number of respondents wanted authorities to be required to maintain monitoring data.

Q13. *Are there any benefits to the ‘do nothing’ option of not consolidating regulations and creating a unified system for tree preservation orders?*

3.26 A small proportion of respondents, mostly local government, would prefer to see the current system kept so that “article 5 certificates” could be retained or a more fundamental review carried out. On the other hand, a majority of respondents did not see any benefits in continuing with the existing system, with comments that the proposed changes were long overdue and needed to update the current complex system.

¹ http://www.planningportal.gov.uk/uploads/parsol/toolkits/parsol_estandards_04.pdf

4. The Government's response to the comments received

4.1 The Government gave careful consideration to the consultation responses. The range of views has reinforced its view of the need for consolidation and streamlining of the regulations.

4.2 The new regulations reflect the consultation proposals, but with the following changes in the light of points made by consultees:

- i) A requirement for a tree owner other than a statutory undertaker to give written prior notice to the local authority of their intention to carry out works authorised by an exemption, unless there was imminent danger. This requirement was present in pre-1999 tree preservation orders and recommended in guidance. The prior notice (by e-mail or letter) will not be onerous and will provide the local authority involved with an opportunity to require a full application if there was doubt the exemption applied, and therefore potentially may avoid litigation.
- ii) To increase the default period for the duration of consents for work on trees from one year to two years. This will increase flexibility for tree owners and make it consistent with the existing period for notified work to trees in conservation areas. It remains open to the local authority to vary this period if appropriate by use of conditions.

4.3 The suggestion from some consultees to retain 'article 5 certificates' was not accepted as the streamlined system is considered to provide adequate safeguards relating to compensation.

4.4 The suggestions to remove the exception regarding dead trees, and not to include a new exception regarding dead branches, were not accepted. These suggestions would have added to the complexity of the system and imposed new burdens on local government and tree owners.