

**EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND)
REGULATIONS 2012**

2012 No. 605

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 Local planning authorities protect trees in the interests of amenity by making Tree Preservation Orders (TPOs). Provisions are spread across primary and various secondary legislation and different rules apply depending on when the TPO is made.

- 2.2 The Government is keen to simplify the TPO system. This reflects the Government's ambition to cut through red tape that adds costs and puts unnecessary burdens on individuals, business and local government. Using powers in section 192 of the Planning Act 2008, these regulations put a simpler, fairer unified system in place for all existing and future TPOs in England.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative Context**

- 4.1 This instrument implements section 192 the Planning Act 2008, which omits and amends parts of Chapter 1 of Part 8 of the Town and Country Planning Act 1990, and inserts new section 202A to G into that Act. This contains powers to make new regulations governing TPOs. Section 193 of the Planning Act 2008 omits the content of all existing TPOs, other than the identification of trees. This content is replaced by the new TPO contained in these Regulations, with the effect that all TPOs, whenever made, shall be in the same form and subject to the same provisions as to matters such as appeals and compensation.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 TPOs are usually made by local planning authorities to protect selected trees and woodlands in the interests of amenity. (The Secretary of State has reserve powers to make these Orders, but powers to do so are rarely used.) TPOs prohibit the cutting down, uprooting, topping, lopping, wilful destruction or wilful damage of protected trees without the consent of the local planning authority.

7.2 Local planning authorities have been using TPOs to protect trees and woodlands since the modern planning system was set up in 1947. The current regulations are the 1999 Regulations, which incorporate a model form of TPO in the Schedule to the Regulations. But different TPOs are subject to different rules and procedures depending on when they were made. The rules governing trees protected in 1971 do not mirror those governing trees protected in 2001. Over time this has produced an unnecessarily complicated system.

7.3 Powers under sections 192 and 193 of the Planning Act 2008 enable these regulations to put a simpler, fairer unified system in place for England by consolidating and streamlining the TPO system.

7.4 The new regulations will:

- i) include a new much shorter, simpler model form of TPO. 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 to give them effect immediately, 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) qualify the scope of exempted works (particularly in respect of dead, dying and dangerous trees) and clarify the requirement for prior notification;
- v) introduce a default period of two years for consent of approved works;
- vi) 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 August 1999);
- vii) 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;
- viii) provide a common system for compensation claims arising out of the refusal of consent or imposition of conditions, based on the current provisions that apply only to TPOs made after 1999.

7.5 The current system is more complicated and burdensome for local authorities, tree owners and tree consultants than is necessary. The above changes will enable a more accessible, transparent and user-friendly system. For example, the changes to

introduce a shorter, simpler model TPO and streamline the associated procedures will make the TPO system easier to understand without the need for professional assistance. The changes will make the system easier for local authorities to administer and they will be more able to consider applications for consent to carry out works to trees that are to be repeated on an annual or regular basis, or for a series of operations over a stated period; this will also reduce burdens to applicants, including businesses, by reducing the need for repeated applications. This deregulation reflects the Government's ambition to cut through burdensome red tape that adds costs and puts unnecessary burdens on individuals, business and local government.

7.6 The previous legislation and TPOs have provided a good level of protection for trees that provide significant amenity value. Legislation continues to be required to protect such trees in order that protection can be enforced, with the Courts serving penalties for offences where necessary. The consolidated and streamlined regulations will not change current levels of protection for trees, nor will they impose any new burdens.

7.7 The objectives of providing a consolidated and streamlined system will be delivered by the changes as the new regulations directly consolidate previous regulations and provide a unified, more user-friendly system for all existing and future TPOs. The deregulatory changes have been generally backed by consultees.

8. Consultation outcome

8.1 During 2010 the Government ran a public consultation exercise on the proposed new regulations to consolidate the regulations supporting TPOs and streamline the system in England. The consultation exercise ran for 12 weeks from September until December 2010. It was drawn to the attention of a wide range of bodies and over 240 responses were received including from local authorities, individuals, public or private organisations, national representative organisations, local societies and government agencies.

8.2 The overwhelming majority of respondents, including businesses, supported the general principle of simplifying the regulations to provide one system for making and administering all TPOs.

8.3 Support for each of the individual proposals ranged from about two thirds to three quarters of respondents. There were more equivocal views on the duration of a default period for consents to works. The analysis of responses suggested that a majority of local authorities administering TPOs preferred two years to the one year proposed in the consultation document.

8.4 Some consultees supported prior notification of proposed work to dead or dangerous trees, and also wanted the existing exemption in regard to dead trees to be removed.

8.5 Following the consultation, the Government has decided to make the regulations proposed in the consultation exercise on the streamlining of the TPO system, but with the following changes:

- i) To put into Regulations 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 authorized by an exemption, unless there was imminent danger. This requirement was present in pre-1999 TPOs and has been recommended in the current guidance entitled *Tree Preservation Orders, a Guide to Good Practice*. The prior notice (by e-mail or letter) would not be onerous and would provide the local authority involved with an opportunity to require a full application if there was doubt the exemption applied, and therefore potentially would 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.

8.6 Further information on the outcomes of the consultation and the changes resulting from it are given in the attached Impact Assessment. A detailed Consultation Report including the Government response will be made available on the Department for Communities and Local Government website.

9. Guidance

9.1 The existing information leaflet *Protected Trees: - A guide to tree preservation procedures* explains the purpose of TPOs, exemptions and the how to obtain consent from the local planning authority. Revised guidance will be made available on the Department's website as a downloadable PDF document.

9.2 Non-statutory guidance entitled *Tree Preservation Orders - A Guide to the Law and Good Practice* was published primarily to assist local planning authorities in the making, administration and enforcement of the TPO legislation. Updated guidance will be made available on the Department's website as a downloadable PDF document.

10. Impact

10.1 The impact on business, charities or voluntary bodies is a small net benefit.

10.2 The impact on the public sector is a net benefit.

10.3 An Impact Assessment is attached to this memorandum and provides further detail on this. It shows that the deregulatory changes will provide a benefit to local authorities of around £0.5m per year and a small net benefit to businesses as tree owners and tree contractors.

11. Regulating small business

11.1 The legislation applies to small business. However the changes are deregulatory and will make the TPO system more accessible, transparent, user-

friendly, less burdensome and fairer for businesses as tree owners and tree contractors.

12. Monitoring & review

12.1 The Government will consider the feedback from users on how the consolidated and streamlined regulations work in practice, and whether further improvements to the system can be made.

12.2 The new regulations will be subject to internal review five years after implementation to establish the actual costs and benefits and whether the objectives have been achieved. The legislation may be amended accordingly.

13. Contact

Julian Pitt at the Department for Communities and Local Government can answer queries regarding the instrument (Tel: 0303 4441630 or email: julian.pitt@communities.gsi.gov.uk)