



SCOTTISH EXECUTIVE
Development Department

PLANNING

Tree Preservation Orders

Consultation Paper

December 2004



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SCOTTISH EXECUTIVE

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As Per Distribution List

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Your ref:
Our ref: ZPE 4/6/1

7 December 2004

Dear Consultee

CONSULTATION ON TREE PRESERVATION ORDERS

I enclose a consultation paper on Tree Preservation Orders and invite your comments on this document.

Responding to this consultation paper

We are inviting written responses to the consultation on Tree Preservation Orders by 28th February 2005. **Please send your response to:**

tpo.consultation@scotland.gsi.gov.uk

or

Marilyn Tweedie
Scottish Executive Development Department
Planning Division
Area 2-H
Victoria Quay
Edinburgh
EH6 6QQ

We would be grateful if you could clearly indicate in your response the sections or paragraphs to which you are responding. Any further comments may also be included. This will aid our analysis of the responses received.

I also enclose a note about the Executive's consultation processes which includes a *Respondee Information Form*. This form allows you to indicate how you wish your consultation response to be handled. Please return your completed form along with your response to the consultation. All responses will be acknowledged.

Access to consultation responses

We will make all responses available to the public in the Scottish Executive Library by the 11th April 2005 unless confidentiality is requested. In addition, we will later publish an analysis of responses on the Scottish Executive website. While numerical totals may include confidential responses, the name or content of the response will not be published. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library or placed on the website.

SEConsult

A new email alert system for SE consultations (SEconsult) was launched in March 2004. This system will allow stakeholder individuals and organisations to register and receive a weekly email containing details of all new Scottish Executive consultations (including web links). SEconsult will complement, but in no way replace the Scottish Executive's distribution lists, and is designed to allow stakeholders to 'keep an eye' on all Scottish Executive consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We encourage you to register as soon as possible on <http://www.scotland.gov.uk/consultations/seconsult.aspx>.

Further copies of this consultation can be obtained by telephoning 0131 244 7540. It can also be found on the Scottish Executive website at: <http://www.scotland.gov.uk/consultations>. Freephone 0800 771234 to find out where your nearest public Internet access point is, if you prefer to submit your response by e-mail. A shortened list of those who we are consulting/informing can be found at the back of the consultation paper. A full list is available on request. If you are aware of any other organisations who should be consulted please contact **Marilyn Tweedie** on **0131 244 7540**.

Yours faithfully

KESTER GIBSON



The Scottish Executive Consultation Process

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

Typically, Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4552).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

If you have any comments about how this consultation exercise has been conducted, please send them to:

Graham Robinson
Scottish Executive Development Department
Area 2-H (B)
Victoria Quay
Edinburgh
EH6 6QQ
E-mail: graham.robinson@scotland.gsi.gov.uk

RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name:

Postal Address:

Title of Consultation: *Tree Preservation Orders – Consultation Paper*

1. Are you responding as:

- an individual (go to 2a/b)
on behalf of a group or organisation (go to 2c)

2a. **INDIVIDUALS:**

Do you agree to your response being made available to the public (in SE library and/or on SE website)?

- Yes (go to 2b below)
No, not at all

2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**Please tick one** of the following boxes)

- Yes, make my response, name and address all available
Yes, make my response available, but not my name or address
Yes, make my response and name available, but not my address

2c. **ON BEHALF OF GROUPS OR ORGANISATIONS:**

Your name and address as respondees **will be** made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

- Yes
No

3. We will share your response internally with other SE policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future for consultation or research purposes?

- Yes
No

Signed:

Organisation:

Date:



TREE PRESERVATION ORDERS - CONSULTATION PAPER

Introduction

1. Trees are a valuable part of our built environment contributing to landscape quality, local amenity and nature conservation. Trees and landscaping are integral to the design quality of most developments. They help to define the character of an area, improve quality of life, and increase the attraction of places for people to live and work in. All communities should enjoy the benefits of trees, and planning remains one of the key instruments for achieving this.

Legislation

2. Trees are protected by the Town and Country Planning (Scotland) Act 1997, through Tree Preservation Orders (TPOs) (Section 160), Conservation Areas (section 172) and Planning Conditions (section 159).
3. A tree preservation order (TPO) is an order made by a planning authority in respect of trees or woodlands. The principal effect of a TPO is to prohibit the cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of trees without the authority's consent. In the case of conservation areas, notice must be served on the planning authority before any work can be undertaken. The planning authority then has 6 weeks to either give their consent or serve a TPO for the trees in question. TPOs are generally used when a valued tree, group of trees or woodland is considered to be under threat.
4. The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas)(Scotland) Regulations 1975 provide secondary legislation further setting out the procedures for serving a TPO and the form and content of the order itself. Minor amendments to these regulations were made in 1981 and 1984.

Background

5. In Scotland the legislation relating to trees has changed little since 1975, and in 2002 research was commissioned to examine whether the TPO procedures in Scotland are still effective. The research report '*The Effectiveness of Tree Preservation Orders in Scotland*' published in December that year, found that the TPO system is basically sound, and that a series of fine tunings would provide an up-to-date structure for protecting trees across Scotland. The proposals for legislative change presented in this consultation paper are based on the findings of this report and subsequent discussions with stakeholders. In England and Wales, a similar review of TPOs led to the Town and Country Planning (Trees) Regulations 1999.

Consultation

6. The principles of tree preservation are long established and therefore this consultation does not seek views on the many wider issues relating to trees. This paper sets out a number of specific proposals for changes to the Town and Country Planning (Scotland)

Act 1997 and The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas)(Scotland) Regulations 1975. We believe that these proposals would improve the effectiveness of TPOs and simplify a sometimes complicated system. This consultation also invites comments on whether the Forestry Commission should be made a statutory consultee for planning applications that involve significant amounts of felling. No final decisions have been reached on any of the issues covered and the purpose of this consultation is to encourage informed and focused discussion on a number of detailed points.

7. Following full consideration of all the responses, changes to the legislation will be taken forward through the forthcoming Planning Bill and new regulations. The consultation is aimed at all members of the public, local government, the arboricultural industry and special interest groups, throughout Scotland.

Regulatory Appraisal

8. The Executive is committed to delivering a better regulatory framework to assist business, regulator and the wider community. In finalising proposals for presentation to Parliament, a Regulatory Impact Assessment will be undertaken with the aim of ensuring that the right balance is achieved between securing the benefits of regulation and minimising the regulatory burden. To assist in preparing such an appraisal, it would be helpful if respondents could give an indication of any potential benefits or cost implications of the proposals.

ISSUES FOR CONSIDERATION

Removing the distinction between TPOs and provisional TPOs

9. Section 160 of the Town and Country Planning (Scotland) Act 1997 establishes the power to make tree preservation orders. A TPO served under this section of the Act does not take effect until the order has been confirmed by the Planning Authority following publicity and the consideration of any representations.
10. However, if it appears to a Planning Authority that a TPO should take immediate effect they can include a direction applying section 163 of the Act. The TPO then takes effect on the date specified but only provisionally. If the TPO is not confirmed within six months then the protection comes to an end. Such orders are commonly referred to as 'provisional orders'
11. It has become standard practice for Planning Authorities to automatically include a direction under 163 so that the TPO takes immediate effect. This widespread practice strengthens the protection of the tree or woodland and has no discernable implications for the consideration of representations or timescales for confirming the order.

Question 1: We propose that all TPOs should take effect immediately, and remain in force provisionally for a period of six months or until they are confirmed. Do you agree with this proposal?

Protecting Trees under immediate threat

12. Serving a TPO can take time as information such as land ownership is gathered and the order itself is drafted. In a minority of cases, substantial felling can take place before the Planning Authority is able to serve the TPO. To address this problem the review into '*The Effectiveness of Tree Preservation Orders in Scotland*' suggested that an emergency power, similar to a stop notice, could be introduced which would prohibit all operations in relation to defined trees.

Question 2: We propose to introduce provisions that would give Planning Authorities an emergency power to prohibit tree operations. The notice would be publicised by a site notice identifying the trees in question and their location. The notice would stay in force for a maximum of 28 days. Do you agree with this proposal?

Placing a general requirement on Local Authorities to monitor TPOs

13. TPOs can be very specific; identifying individual trees, their location and species. However, trees and woodlands change over time as they mature, die, and are replaced by new growth. As a consequence out of date TPOs can have very little of their original tree cover left leaving the trees without any protection. Surrounding land uses can also change over time and in some instances a TPO served many years ago may no longer be appropriate. To ensure that trees and woodlands are given adequate protection, and to keep TPOs up to date, Planning Authorities should review their TPOs regularly and make use of the variation and revocation powers available to them.

Question 3: In the forthcoming planning bill, we propose to introduce a general duty on planning authorities to monitor and review TPOs. Do you agree with this proposal? What do you think would be the implications of such a duty?

Clarifying the position on varying and revoking powers

14. Section 275 (8) of the Town and Country Planning (Scotland) Act 1997 confers a general power on local authorities to vary and revoke orders. The power to vary a TPO allows orders to be updated. The revoking power is usually used when a TPO becomes obsolete because of changes to the trees or woodlands or because they are no longer under threat. The procedures for varying and revoking TPOs are set out in the Third Schedule to the form of the order. These require local authorities to notify owners, advertise the changes and invite objections, serve the notice and in some instances confirm it. These procedures are complicated and time consuming.

Question 4: We propose to introduce much simpler procedures which will not require Planning Authorities to invite objections and representations or confirm any decision to revoke a TPO. Nor will they have to confirm any decision to vary a TPO in cases where no new trees or woodlands are being added to the order. Instead, the decision to revoke or vary the TPO in these circumstances will take immediate effect. The Planning Authority will still be required to inform the owners affected by the revocation or variation of their decision. Any decision to vary or revoke a TPO will also have to be recorded formally on the TPO document and be made available for public inspection. These procedures would be set out in secondary legislation. Do you agree with these proposals?

Statutory Undertakers and TPOs

15. A tree protected by a TPO can be uprooted, felled or lopped provided it is urgently necessary in the interests of safety or for the prevention or abatement of a nuisance. Section 160 (6) of the Town and Country Planning (Scotland) Act 1997 requires that notice in writing is given to the planning authorities as soon as practicable after the operations. This allows the Planning Authority to update their records, consider the need for replacement planting, and helps them deal with any queries relating to the operations.
16. Statutory undertakers, such as electricity operators or railway companies, are also allowed to uproot, fell or lop trees protected by TPOs provided it is in compliance with their statutory duties, but they are not required to notify the planning authority of these works. Although many of them do so as a matter of good practice.

Question 5: We propose that statutory undertakers should be required to notify planning authorities when undertaking operations on a tree, group of trees or woodland covered by a TPO. Do you agree with this proposal? What do you think would be the implications of this requirement?

Ensuring that all replacement trees are subject to TPOs

17. Planning Authorities can require replacement planting for trees that have been removed, uprooted or destroyed in contravention of a TPO, or trees that have been removed in the interests of safety. Section 167 of the Town and Country Planning (Scotland) Act 1997 ensures that the original TPO remains in force for these replacement trees.
18. Replacement trees can also be required as a condition of consent following an application to fell a tree covered by a TPO, but in these cases the replacement planting is no longer covered by the TPO.

Question 6: We propose that TPOs should remain in force for all replacement trees, including those required as a condition of consent. Do you agree with this proposal?

Adding historic value to amenity as a reason for serving a TPO

19. TPOs are only made if a planning authority considers it to be expedient in the interests of amenity. Many trees have important cultural or historical significance and it has been suggested that the terms of the Act should be broadened to allow TPOs to be served on the basis of historic value. It is also argued that the existing arrangements already allow for this.

Question 7: Do you consider the existing provisions to be adequate for the protection of trees of cultural or historical significance?

Introducing procedures for trees in the ownership of Planning Authorities

20. Planning Authorities can undertake work on protected trees under their ownership without going through any form of procedure. It has been suggested that this goes against principles of local accountability and transparent decision making.

Question 8: We propose that before carrying out work on protected trees, Planning Authorities will have to publicise their proposals by displaying a site notice on or near the site on which the trees are situated. The site notice will have to give details of the proposal, the Planning Authority's reasons for it, and will have to specify a date (at least 21 days from the date of the site notice) by which any comments on the proposal should be received. Any comments received will have to be considered before the Planning Authority can make a decision on the proposal, and this decision must not be made by a committee or officer of the Authority responsible for managing the land in question. Do you agree with this proposal? What do you think would be the implications of this procedure?

Extending notification requirements

21. Section 161 (4) of the Town and Country Planning (Scotland) Act 1997 requires planning authorities to notify the owners and occupier of land affected by a TPO. Unlike planning

permissions there is no requirement to notify neighbouring properties, although some authorities do notify neighbours as a matter of good practice.

Question 9: We propose to extend notification to the owners and occupiers of any land adjoining the land on which a TPO is being served. This requirement would also apply to related appeals procedures. Do you agree with this proposal? What do you think would be the implications of this?

Removing compensation exemptions

22. When a planning authority refuses consent to undertake works on a tree covered by a TPO they can certify that their decision is in the interests of good forestry, or that the trees, groups of trees or woodlands have an 'outstanding' or 'special' amenity value. This power is set out in article 6 of the schedule relating to the form of the Tree Preservation Order. The simple effect of an article 6 certificate is to remove the Planning Authority's liability to pay compensation for loss or damage caused or incurred as a result of their decision. In reality, Article 6 certificates are rarely used. In England the use of these certificates has been removed but restrictions have been placed on minor compensation claims.

Question 10: We propose to remove the exemption from compensation established by Article 6 certificates, creating a general right to compensation for such loss or damage caused by a Planning Authority's decision. Do you agree with this proposal? What do you think would be the implications for Planning Authorities? Is there a need to restrict minor compensation claims in Scotland?

Providing a clear legislative framework

23. The legal framework for TPOs is provided in both primary and secondary legislation, neither of which have been significantly updated since 1975. Any new provisions will be also be delivered through a Parliamentary Act and subsequent regulations. The current legislative framework can seem complicated and difficult to use. Tree Preservation Orders themselves run to several pages, are difficult to draft and use language that is hard to understand; but they also contain important legal information.

Question 11: We want to make the content and language of TPOs clearer, easier to understand and easier to use. How do you think this can be achieved and what essential information do you think should be conveyed in the model order?

Minor Changes

24. In addition to the above points we intend to make some minor changes to administrative practices so that Planning Authorities would be required to record dates and decisions on the TPO itself. We would also update the legislation to reflect new subsections added by the Planning and Compulsory Purchase Act 2004 removing Crown immunity. The list of statutory undertakers would also be updated.

Making the Forestry Commission a statutory consultee on planning applications that involve felling of more than 0.25ha

25. The Town and Country Planning (General Development Procedure) (Scotland) Order 1992, as amended, details a number of consultations planning authorities must take in relation to certain planning applications. Statutory consultees include bodies whose interests may be affected by a planning application and whose views the planning authority should have prior to determining an application. Article 15 of the Order contains the list of consultees and the individual criteria for triggering consultation. In some instances, where the planning authority wish to grant planning permission but in doing so choose to set aside the views of a statutory consultee, the planning application is notified to the Scottish Ministers. These notification requirements, which have, in the main, been put in place to ensure that the Scottish Ministers are made aware of development proposals that may raise issues of national importance, are set out in the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997, as amended.
26. There have been a number of cases where significant felling has been undertaken as part of a planning permission. In such cases the planning permission overrides the need for a felling licence and the Forestry Commission have no involvement in the case.

Question 12: We propose to make the Forestry Commission a statutory consultee for applications that involve more than 0.25ha of felling. Do you agree with this proposal? Would a requirement to notify Scottish Ministers also be necessary?

ANNEX A: LEGISLATION AND ASSOCIATED DOCUMENTS

Legislation

Town and Country Planning (Scotland) Act 1997

<http://www.hmso.gov.uk/acts/acts1997/1997008.htm>

Town and Country Planning (Notification of Applications) (Scotland) Direction 1997

The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas)(Scotland) Regulations 1975 (revised 1981 and 1984)

The Town and Country Planning (General Development Procedure) (Scotland) Order 1992

http://www.scotland.gov.uk/about/Planning/Circular_6_1992.aspx

Associated documents

Scottish Executive planning documents (SPPs, NPPGs, PANs, Circulars etc)

<http://www.scotland.gov.uk/Topics/Planning-Building/Planning>

The Effectiveness of Tree Preservation Orders in Scotland

<http://www.scotland.gov.uk/library5/environment/etpo-00.asp>

Tree Preservation Orders: A Guide to the Law and Good Practice (ODPM)

http://www.odpm.gov.uk/stellent/groups/odpm_urbanpolicy/documents/page/odpm_urbanpolicy_607978.hcsp

Tree Felling – Getting Permission

[http://www.forestry.gov.uk/pdf/wgsfell.pdf/\\$FILE/wgsfell.pdf](http://www.forestry.gov.uk/pdf/wgsfell.pdf/$FILE/wgsfell.pdf)

ANNEX B: LIST OF QUESTIONS

Question 1: We propose that all TPOs should take effect immediately, and remain in force provisionally for a period of six months or until they are confirmed. Do you agree with this proposal?

Question 2: We propose to introduce provisions that would give Planning Authorities an emergency power to prohibit tree operations. The notice would be publicised by a site notice identifying the trees in question and their location. The notice would stay in force for a maximum of 28 days. Do you agree with this proposal?

Question 3: In the forthcoming planning bill, we propose to introduce a general duty on planning authorities to monitor and review TPOs. Do you agree with this proposal? What do you think would be the implications of such a duty?

Question 4: We propose to introduce much simpler procedures which will not require Planning Authorities to invite objections and representations or confirm any decision to revoke a TPO. Nor will they have to confirm any decision to vary a TPO in cases where no new trees or woodlands are being added to the order. Instead, the decision to revoke or vary the TPO in these circumstances will take immediate effect. The Planning Authority will still be required to inform the owners affected by the revocation or variation of their decision. Any decision to vary or revoke a TPO will also have to be recorded formally on the TPO document and be made available for public inspection. These procedures would be set out in secondary legislation. Do you agree with these proposals?

Question 5: We propose that statutory undertakers should be required to notify planning authorities when undertaking operations on a tree, group of trees or woodland covered by a TPO. Do you agree with this proposal? What do you think would be the implications of this requirement?

Question 6: We propose that TPOs should remain in force for all replacement trees, including those required as a condition of consent. Do you agree with this proposal?

Question 7: Do you consider the existing provisions to be adequate for the protection of trees of cultural or historical significance?

Question 8: We propose that before carrying out work on protected trees, Planning Authorities will have to publicise their proposals by displaying a site notice on or near the site on which the trees are situated. The site notice will have to give details of the proposal, the Planning Authority's reasons for it, and will have to specify a date (at least 21 days from the date of the site notice) by which any comments on the proposal should be received. Any comments received will have to be considered before the Planning Authority can make a decision on the proposal, and this decision must not be made by a committee or officer of the Authority responsible for managing the land in question. Do you agree with this proposal? What do you think would be the implications of this procedure?

Question 9: We propose to extend notification to the owners and occupiers of any land adjoining the land on which a TPO is being served. This requirement would also apply to

related appeals procedures. Do you agree with this proposal? What do you think would be the implications of this?

Question 10: We propose to remove the exemption from compensation established by Article 6 certificates, creating a general right to compensation for such loss or damage caused by a Planning Authority's decision. Do you agree with this proposal? What do you think would be the implications for Planning Authorities? Is there a need to restrict minor compensation claims in Scotland?

Question 11: We want to make the content and language of TPOs clearer, easier to understand and easier to use. How do you think this can be achieved and what essential information do you think should be conveyed in the model order?

Question 12: We propose to make the Forestry Commission a statutory consultee for applications that involve more than 0.25ha of felling. Do you agree with this proposal? Would a requirement to notify Scottish Ministers also be necessary?

ANNEX C: CONDENSED LIST OF CONSULTEES

Association for the Protection of Rural Scotland
British Telecom
Communities Scotland
COSLA
Forestry & Timber Association
Forestry Commission
Forestry Contracting Association
Greenspace Scotland
Historic Scotland
National Association of Tree Officers
National Small Woods Association
National Urban Forestry Unit
Network Rail
NTL
ODPM
RIAS
RICS
Royal Scottish Forestry Society
Royal Town Planning Institute in Scotland
Scottish Gas
Scottish Landscape Industry Group
Scottish Natural Heritage
Scottish Power
Scottish Water
Scottish Woodlands Limited
SEPA
Strategic Rail Authority
Telewest Communications
The Arboricultural Association
The Institute of Chartered Foresters
The International Society of Arboriculture
The Landscape Institute
The Law Society
The Tree Council
The Woodland Trust Scotland
Transco PLC
32 Local Authorities

A total of 290 organisations and individuals have been sent a copy of the consultation paper and a further 660 individuals and organisations have been informed of the consultation paper by e-mail alert. Please contact Marilyn Tweedie on 0131 244 7540 to request a full list of consultees.

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