



Planning Guide - Tree Preservation Orders

Trees Preservation Orders (TPOs) protect trees or woodland specified in orders from being cut, lopped or uprooted and from any wilful damage or destruction without prior permission of a local planning authority (LPA). TPOs do not prevent the carrying out of 'necessary work' to which the LPA has given its consent. Further permission is not required in respect of certain works to trees (provided the authority is given at least 5 days' notice); however, a LPA may require the owner to replace any tree that is removed or destroyed.

When can a tree preservation order be made?

LPAs are empowered – under Part VIII of the *Town and Country Planning Act 1990*¹ (the 1990 Act) and the *Town and Country Planning (Trees) Regulations 1999*² – to make TPOs in respect of trees (including those forming part of a hedge or hedgerow), groups of trees or woodland. LPAs also have a duty (when granting planning permission) to ensure adequate provision is made for the protection of trees, including the making of TPOs.³

Section 198(1) of the 1990 Act sets out the grounds on which a LPA may make TPOs:

(1) If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.

The 1990 Act does not define the terms “tree” and “woodland”; the courts have held that those terms are to be given their natural meaning.

Section 198(3) of the 1990 Act sets out particular provisions that a TPO may prescribe:

A tree preservation order may, in particular, make provision—

(a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees except with the consent of the local planning authority, and for enabling that authority to give their consent subject to conditions;

(b) for securing the replanting, in such manner as may be prescribed by or under the order, of any part of a woodland area which is felled in the course of forestry operations permitted by or under the order;

(c) for applying, in relation to any consent under the order, and to applications for such consent, any of the provisions of this Act mentioned in subsection (4), subject to such adaptations and modifications as may be specified in the order.⁴

TPOs do not take effect until confirmed by the LPA. The LPA may confirm a TPO either without modification or subject to such modifications it considers expedient.

¹ The *Town and Country Planning Act 1990*,

<http://www.lexisnexis.com/uk/legal/results/docview>

² 1999 Statutory Instrument No.1892 <http://www.lexisnexis.com/uk/legal/results/docview>

³ See *Town and Country Planning Act 1990*, sections 197 and 198.

⁴ See section 198(4): The provisions referred to in subsection (3)(c) are— (a) the provisions of Part III relating to planning permission and to applications for planning permission, except sections 56, 62, 65, 69(3) and (4), 71, 91 to 96, 100 and 101 and Schedule 8; and (b) sections 137 to 141, 143 and 144 (except so far as they relate to purchase notices served in consequence of such orders as are mentioned in section 137(1)(b) or (c)); (c) section 316.

Is there a right of appeal against a tree preservation order?

There is no right of appeal against a LPA's decision to make a TPO⁵ – either when made or confirmed – as the legislation provides that the validity of a TPO cannot be challenged in any legal proceedings whatsoever except by way of application to the Administrative Division of the High Court on prescribed grounds.^{6, 7}

Is there a right of appeal against refusal of an application to undertake work on a tree protected by a tree preservation order?

Unless one or more of the statutory exceptions applies (see below), the consent of the LPA is required for the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees subject to a TPO. An appeal can be made to Welsh Ministers against the refusal of an application to cut down or carry out work on trees protected by a TPO.

Section 78 of the 1990 Act (as modified and applied by the 1999 Regulations) stipulates the ground for an appeal against planning decisions and failure to take such decisions.

These types of appeal must be made by notice in writing addressed to the Welsh Ministers, specifying the grounds on which the appeal is made. Part IV of the *Town and Country Planning (Trees) Regulations 1999* sets out procedural requirements in relation to such appeals.

On appeal, the Welsh Ministers have the power to—

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

The validity of a decision by Welsh Ministers on an appeal cannot be challenged except by way of statutory application under the 1990 Act or claim for, in certain circumstances, judicial review in the High Court.

Are there any circumstances in which permission is not required?

It is not necessary to obtain consent to undertake the following work on trees subject to a TPO—

- the cutting down, uprooting, topping or lopping of trees which are dying or dead or have become dangerous;
- the cutting down, uprooting, topping or lopping of any trees in compliance with any obligations imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance;⁸
- felling of trees under a licence granted by the Forestry Commission;
- work on fruit trees grown for the commercial production of fruit;

⁵ A Direction under section 201 of the 1990 Act enables a LPA to make a TPO, which takes immediate effect. Until confirmed it is only provisional. If a TPO is not confirmed within 6 months of the date it was made the provisional protection ceases (*Technical Advice Note (Wales) 10, Enforcement of Planning Control – Oct 1997*),

⁶ See the *Town and Country Planning Act 1990*, section 284.

⁷ That is, a statutory application under section 288 of the *Town and Country Planning Act 1990* or a claim for judicial review. By section 288, an application to the High Court may be made by any person who is 'aggrieved' by a TPO on the grounds that the TPO is not within the powers of the Act, or that the requirements of the 1990 Act or 1999 Regulations have not been complied with in relation to the TPO.

⁸ See *Town and Country Planning Act 1990*, section 198(6b).



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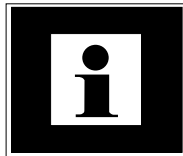
- cutting-down or cutting-back trees that directly obstruct development which has been permitted by detailed planning permission.⁹

Details of any TPO in force for a particular area should be available from the office of the LPA for the area.

Offences

It is a criminal offence to remove, uproot or destroy a tree subject to a TPO.

The offence may be tried *summarily* (for which the maximum penalty is a fine of £20,000) or on *indictment* (for which the maximum penalty is a fine (unlimited)). Anyone who carries out work in a way that is not likely to destroy the tree is liable to a fine in the Magistrates' Court of up to £2,500. In determining the amount of a fine to be imposed, the court is required to consider any benefit the person has gained from the offence.¹⁰ Further, the 1990 Act imposes a duty on the owner of the land concerned to replace trees that have been removed, uprooted or destroyed in contravention of a tree preservation order.¹¹



Further Information:

The statutory provisions cited above may be subject to subsequent amendment; the consolidated text of those provisions can be obtained from Butterworths' *LexisNexis* service:

http://assembly/presidingoffic/mrs/resources/electronic/qlinks_lexisnexus.htm

Planning Guidance (Wales) Technical Advice Notes (Wales) 10: Tree Preservation Orders:

<http://new.wales.gov.uk/about/departments/depc/epcpublications/PlanPubs/TAN/TAN10?lang=en>

Protected Trees: A Guide to Tree Preservation Orders (2002):

http://new.wales.gov.uk/docrepos/40382/4038231121/403821/403821/403823/tree_preservation_2002-e.pdf?lang=en

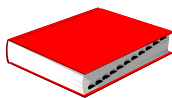
Town and Country Planning Act 1990 and regulations can be accessed via Butterworths' *LexisNexis* service:

http://assembly/presidingoffic/mrs/resources/electronic/qlinks_lexisnexus.htm



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⁹ See Town and Country Planning Act 1990, section 198 (6), (7) and (8).

¹⁰ See the Town and Country Planning Act 1990, section 210.

¹¹ See the Town and Country Planning Act 1990, section 206.