

## Scottish Government Tree Preservation Order Consultation Paper

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**Planning Committee**  
**5 August 2010**

### **1 Purpose of report**

- 1.1 To advise the Committee of the Scottish Government's proposed changes to *The Town & Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975* and to seek ratification of the draft Council response which had to be submitted to the Scottish Government by 9 July 2010.

### **2 Summary**

- 2.1 The Scottish Government has consulted on proposals to improve the effectiveness of tree preservation orders. Proposed changes to the model TPO are of concern, as is the absence of simplified procedures advocated in a previous consultation paper.

### **3 Main report**

- 3.1 Legislation relating to Tree Preservation Orders (TPOs) has changed little from 1975. In 2002, the Government commissioned a research report *The Effectiveness of Tree Preservation Orders*. This led to the *Tree Preservation Order Consultation Paper (2004)* and the subsequent *Overview of Consultation Responses (2005)*. The White Paper *Modernising the Planning System (2005)* indicated that proposals to enhance the effectiveness of TPOs would be taken forward through the Planning Bill. Changes in the primary legislation have now been taken forward.
- 2.2 The current consultation seeks responses to proposed changes in the secondary legislation *The Town & Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975* and on a Model TPO.
- 2.3 A detailed response is in the appendices; most changes are minor and bring legislative references up to date. However the following changes are significant and could potentially impact on the Council as planning authority.

- Currently the model document used when making a TPO is contained within the existing regulations. This requires that an order must be substantially in that form. The consultation proposal is for the model order to be removed from the Regulations and to stand as guidance only. This is not supported as important provisions such as rights of appeal would no longer be statutory and the resulting lack of uniformity in orders would make administration more complex and confusing for all parties involved in the various processes. The draft response does not support this proposal and argues that TPOs should remain substantially in the form of the model order which should remain part of the regulations.
- The Town & Country Planning (Scotland) Act 1997 was amended to place a duty on planning authorities to review their existing TPOs. To facilitate this, the Scottish Government had previously indicated they would introduce changes to simplify procedures for modifying or revoking TPOs. However, no such changes have been introduced and the existing statutory provisions have implications for planning authorities both in terms of administrative cost and staff time. The draft response expresses concern at this outcome and highlights the potential resource implications.

### **3 Financial Implications**

- 3.1 This report is in relation to a Scottish Government consultation paper. Notwithstanding the resource implication noted above there are no direct financial implications arising from this report.

### **4 Environmental Impact**

- 4.1 This report is in relation to a Scottish Government consultation paper. There are no direct environmental implications arising from this report.

### **5 Recommendations**

- 5.1 It is recommended that Committee ratify the draft consultation response as set out in Appendix 1.



**Dave Anderson**  
Director of City Development

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Appendices	1. City of Edinburgh Council Draft Response to <i>Tree Preservation Orders (TPOs) Consultation Paper</i>
Contact/tel/Email	Steven Milne/0131 529 5531/steven.milne@edinburgh.gov.uk
Wards affected	City Wide
Single Outcome Agreement	N/A
Background Papers	1. <i>Tree Preservation Orders Consultation Paper</i> . Scottish Government. <a href="http://www.scotland.gov.uk/Publications/2010/04/16114715/0">http://www.scotland.gov.uk/Publications/2010/04/16114715/0</a>

## **APPENDIX 1**

### *Tree Preservation Orders (TPO) - Consultation Paper*

Draft Response by the City of Edinburgh Council. 08.07.10

#### **Regulation 3**

**Q1: Do you have any comments on the Model Order being contained within guidance rather than within the regulations?**

- City of Edinburgh Council does not support this proposal and does not see the rationale for it. The power of the Scottish Government to regulate over the form of TPOs is clearly laid out in S161(3) of the 1997 Act.
- While planning authorities do currently have discretion over what provisions are contained in an order, the requirement in the current regulation that orders are substantially in the form of the model order ensures that a consistent framework of provisions exists providing clarity and consistency within and between planning authorities. Significant variation between individual orders and planning authorities in areas such as rights of appeal and certain exemptions is likely to be confusing for the public, arboricultural profession and other groups. This Council supports the requirement for orders to be substantially in the form of a model order containing all the relevant provisions and within the regulations.
- Rather than there appearing justification for reducing the regulation of TPOs the Planning etc. (Scotland) Act 2006 inserts a new sub-section S161(8) which extends the powers to regulate on the form of TPOs to regulating the form and manner of applications for consent. It is noted that the regulations do not refer to or progress this amendment to the Act.

#### **Regulation 4**

**Q2: Do you agree that neighbour notification should be at the discretion of the planning authority?**

- Yes

#### **Regulation 6**

*Para 32 - Comment.*

For the proposal not to include a reference to the Register of Sasines is at odds with the stated intention to make the regulations and model order easier to understand. Even though this requirement is mentioned in the primary legislation it seems sensible if the list of persons contained within the regulation, who are to be served with an order, was complete.

**Q3: Do you support the requirement to notify any person who made representations of the planning authority's decision?**

- yes

#### **Regulation 7**

**Q4: Do you support the proposed procedures where a TPO is not confirmed?**

- Yes

### **Regulation 8 & 9**

#### ***Q5: Do you agree with the proposed procedures for varying and revoking TPOs?***

- This question could be misleading as the proposed regulations do not introduce any procedures for the varying and revoking of orders. All that is proposed in these regulations is an additional administrative requirement to endorse the original order to show it has been modified or revoked, which is supported. However, the outcome of the proposal is no simplified procedures for modifying or revoking and additional administrative requirements.

### **Regulation 10**

#### *Para 41 – Comment.*

There is no exemption in the proposed regulations for work urgently required in the interests of safety as contained within the current regulations. This needs to be included along with the requirement in the current regulations to provide a minimum of 5 days notice etc where trees are to be removed.

The current regulations apply the exemptions contained within the Act and model TPO to trees in a conservation area. The Planning etc. (Scotland) Act 2006 introduced a requirement into the 1997 Act for statutory undertakers, when exercising their exemption in respect of TPO trees to notify the planning authority. This amendment to TPO exemptions should be applied to trees in conservation areas through the new regulations.

Paragraph 41 of the consultation paper uses the term 'local authority' which differs from Article 10(b) of the proposed Regulations and Article 11(iii) of the 1975 Regulations which refers to the exemption relating to work taking place on 'planning authority' land with the consent of that authority. While it is the wording in the current and proposed Regulations which stands there can be a significant distinction between the many activities of the local authority and its role as the planning authority. The planning authority delegates its statutory planning functions to relevant committees and departments and it is they who are charged with operating on behalf of and to act as the planning authority. It is only the planning authority function within the local authority which is charged with the statutory duties and responsibilities in respect of tree protection and only that part has authority to assess and to authorise work to protected trees. As the previous government proposals requiring any work to protected Council trees to be advertised/notified to local residents has been dropped, it is desirable to ensure that information on work to council trees in conservation areas is at least entered into the public register of works to protected trees. Having that part of a council with the delegated authority and duty to record and assess work to private protected trees (and who are not normally involved in the management of Council trees) also record and assess work to council trees in conservation areas (as is already required for council trees subject to a TPO) promotes transparency and fairness in decision making with the Council as tree owner being seen to follow the same process as private tree owners. Regard should be given to wording the regulations to ensure or at least promote this good practice.

The reference in article 10 (i)(ii) to paragraph (a)(iii) is erroneous.

## **Regulation 11**

### *Para 43 – Comment.*

The model order in the current regulations states that an application 'shall where necessary for the identification...of trees be accompanied by a map or plan...' The wording in the proposed regulations weakens significantly this requirement by stating a map or plan 'may' be used to identify trees. This is not supported and the wording in the current regulations should be retained.

The proposed regulation removes the current requirement for an application to be in writing. Obviously an application needs to be in writing but this should be explicit; clarification of the position regarding electronic communications as it relates to TPOs and trees in conservation areas would be also be helpful.

***Q6: Do you agree with the principle of requiring an application for consent under a TPO where proposed development is either planning permission in principle or permitted development (other than statutory undertakers)?***

- Yes. Please note that The Planning etc. (Scotland) Act 2006 introduced a requirement for statutory undertakers to notify the planning authority of proposed works to trees. This does not, but should, appear in the proposed new regulations or model order.

## **Article 4**

### *Para 48 – Comment.*

The proposed regulations and model order do not include the exemption in Section 160(6) of the Town & Country Planning (Scotland) Act 1997 for work urgently required in the interests for safety. The list of exemptions in the model order or regulations should be complete. The model order in the existing regulations requires a minimum period of notice for the removal of trees of 5 days. This is important as it allows the planning authority the opportunity to inspect a tree and to decide whether a replacement needs to be planted.

## **Article 7**

***Q7: Do you consider that the Model Order should contain exemptions from compensation? - If so what exemptions should be included?***

- If an order is to contain the right to claim compensation then certain exemptions should apply. The exemptions cited as being in the English Regulations appear appropriate but there should not be a financial penalty on planning authorities for safeguarding amenity.

## **Schedule 1**

***Q8: Do you support the retention of the area classification within Schedule 1?***

- Yes

### *Para 57 - Comment.*

There are disadvantages associated with the use of area classifications but also advantages. It is for the planning authority to decide and justify the most appropriate classification.

**Q9: Do you consider that Schedule 1 is sufficient for the identification of the protected trees?**

- Yes

## **Schedule 2**

*Para 59 – Comment.* The removal of provisions for planning authorities to modify or revoke consent under a TPO is not supported particularly as there is no statutory time limit on consents. While this is seldom if ever done, a planning authority should have this power available to it should this appear necessary in the public interest.

## **Section 48**

**Q10: Do you consider that the appeals provisions contained within the model order are sufficient?**

- Yes. However, it is noted that these provisions are for guidance only.

**Q11: Do you consider that the appeal provisions should restrict the matters that are raised at an appeal to those matters that were before the planning authority at the time of the decision?**

- Yes. If the appellant had new or additional information he could have submitted a further application to the planning authority.

## **General**

**Q12: Do you consider that the proposed Model Order is easier to understand?**

- Yes

**Q13: Do you consider that any provisions or information requires to be added to the Model Order?**

- As referred to previously, if the model order is to be for guidance only important provisions contained within it, such as the right of appeal, are for guidance only and have no statutory basis. Such important provisions should be contained within the regulations or the model order should remain part of the regulations.

**Q14: Are there any potential impacts on business or voluntary sectors that we should be aware of in finalising the regulations or model order?**

**Q15: Are there any potential impacts on particular societal groups that we should be aware of in finalising the regulations or model order?**

**Q16: Do you have any other comments to make on the draft regulations or draft model order?**

- The introduction of a duty to review TPOs and the emphasis to modify and revoke orders, without the previously proposed simplification of the requisite procedures will place a considerable extra financial burden on planning authorities and may not represent best value in the use of available resources.
- Regulation 6(5) is not clear as to who the copy of the order is sent to.