

**REPORT TO: PLANNING AND REGULATORY SERVICES COMMITTEE 1
JUNE 2010**

**SUBJECT: THE TOWN AND COUNTRY PLANNING (TREE
PRESERVATION ORDERS AND TREES IN CONSERVATION
AREAS)(SCOTLAND) REGULATIONS 2010**

BY: DIRECTOR OF ENVIRONMENTAL SERVICES

1. REASON FOR REPORT

- 1.1 This report asks Committee to approve the Council's response to a Scottish Government consultation paper proposing new regulations for Tree Preservation Orders and Trees in Conservation Areas. Comments have been requested by 9 July 2010.
- 1.2 This report is submitted to Committee in terms of section D(1) of the Council's Administration scheme relating to the Council's function as planning authority.

2. RECOMMENDATION

2.1 It is recommended that the Committee:

- i) notes the proposed new regulations and changes being introduced;**
- ii) agrees the response set out in Appendix 1 to be submitted to the Scottish Government;**
- iii) notes that the proposed regulations will require staffing resources to implement; and**
- iv) agrees that the Director of Environmental Services reviews current procedures to ensure compliance with the new regulations and Model Order.**

3. BACKGROUND

- 3.1 The Scottish Government is inviting comments on the Town and Country Planning (TPO and Trees in Conservation Areas)(Scotland) Regulations 2010 and a Model TPO.
- 3.2 In Scotland, Tree Preservation Order (TPO) legislation has remained relatively unchanged since 1975. In 2002 the Scottish Government commissioned a research report into the effectiveness of the TPO system, which concluded that it operates well, and that a series of fine tunings would provide an up to date structure for protecting trees across Scotland.
- 3.3 The White Paper "Modernising the Planning System" (2005) indicated that proposals to enhance the effectiveness of TPO's would be taken forward through the Planning Bill.
- 3.4 The proposed changes in the consultation paper with regards to primary legislation have been taken forward through the Planning etc (Scotland) Act

2006. The proposed changes with regards to the secondary legislation are the subject of the consultation paper.

- 3.5 The consultation paper seeks views in response to a number of questions. These are set out in Appendix 1 along with the proposed Council response. A copy of the consultation paper has been made available to members.

4. PROPOSALS

4.1 Model Order

4.1.1 The consultation paper includes a Model Order setting out the suggested form and content of a TPO. This would replace the current Model Order contained within the schedule to the Town and Country Planning (Tree Preservation Orders & Trees in Conservation Areas) (Scotland) Regulations 1975.

4.1.2 It is proposed that a new Model Order should be brought forward in guidance rather than secondary legislation, leaving the final format up to the local authority to decide.

4.2. Neighbour notification

4.2.1. The TPO Consultation paper in 2004 proposed the introduction of neighbour notification to the owners and occupiers of any land adjoining the land on which a TPO is being served.

4.2.2 Although this would bring advantages in terms of wider publicity and awareness raising, disadvantages included:

- significant staffing and resources
- more objections
- establishing land ownership can be problematic
- process could lead to delays in serving TPO's

4.2.3 The Scottish Government. considers it should be left to the discretion of the planning authority to consider whether the TPO should be served on neighbouring owners and occupiers having regard to the effect of the trees on neighbouring land (overhanging branches, presence of roots, threat to trees from owners).

4.3 Trees in Conservation Areas

4.3.1 In advance of carrying out any works to trees in Conservation Areas, the owner of the tree must give written notice to the planning authority detailing the proposed works. The work can be carried out if the planning authority grant consent or after the expiry of 6 weeks from the date of the notice.

4.3.2 Regulation 10 sets out exceptions where no such notice is required.

4.4 Applications to carry out works

4.4.1 Applications for consent to carry out works to trees protected by a TPO must specify the works proposed, reasons for carrying out these works and identify the trees affected.

4.4.2 There are no changes proposed to the acts prohibited by a TPO, namely the cutting down, uprooting, topping, lopping wilful damage or wilful destruction of trees without the planning authority consent.

4.4.3 Exceptions include, where;-

- the tree is situated on the operational land of a statutory undertaker and the work is necessary in the interests of the safe operation of the undertaking, in connection with the repair or renewal of any sewers, mains, pipes, cables or other apparatus, or to enable the statutory undertakers to carry out permitted development.
- Tree work is required for National Security purposes
- The works are to trees involved in the cultivation of fruit
- Tree work or removal is required to implement a planning permission. An application will, however, be required for planning permission in principle and permitted development rights, except for permitted development by statutory undertakers.
- Permitted development by SEPA
- Trees interfering or creating a safety issue with regards to electric plant or lines and the relevant license holder has served notice under para 9 of Schedule 4 of the Electricity Act 1989.

4.5 Decision Notices/ Varying and Revoking an Order

4.5.1 The Regulations propose that the local authority will inform any person having made a representation on a TPO of the outcome of the process. This reflects the wider aims of planning modernisation in terms of transparency and communication.

4.5.2 There are currently no regulations to deal with circumstances in which a TPO is not confirmed. To ensure consistency, the new Regulations introduce a requirement for planning authorities to endorse the TPO to that effect and give notice to the Forestry Commission, Registers Scotland, interested parties and any person who made representations that the TPO has not been confirmed.

4.5.3 To vary or revoke a TPO the same procedure must be used as to make the TPO's, including a period of public consultation and notification of the final decision.

4.5.4 If a TPO is revoked then the planning authority must endorse the original TPO with a statement to that effect and withdraw the original TPO from public inspection

4.6 Compensation

4.6.1 Under the current regulations there is no allowance for compensation when a planning authority refuses consent to undertake works covered by a TPO. The planning authority can certify that their decision was made in the interests of good forestry, or that the trees have an outstanding or special amenity value. This power is set out in Article 6 of the current Schedule which removes the planning authorities' liability to pay compensation for loss or damage caused or incurred as a result of their decision.

4.6.2 The proposed Model Order removes the provision for Article 6 certificates. As a consequence any person who has suffered loss or damage as a result of any refusal of consent shall be entitled to recover compensation from the planning authority.

4.7 "Area" TPO's

4.7.1 Area TPO classifications should only be used in emergencies and then as a temporary measure until the trees in the area are assessed properly and reclassified. It is expected that planning authorities replace existing area classifications with individual or group classifications where appropriate.

4.8 Right of Appeal

4.8.1 It is proposed to introduce a right of appeal to Scottish Ministers against decisions regarding Tree Preservation Orders. Appeals must be made in writing within 28 days of notification of the decision. In the case of non-determination, it is any time after the expiration of 2 months from the date the application was made.

5. SUMMARY OF IMPLICATIONS

(a) Single Outcome Agreement/Service Improvement Plan

Corporate Development Plan/ Community Plan/ Services Improvement Plan

None

(b) Policy and Legal

The proposed regulations introduce changes to the process of serving and managing TPO's. The introduction of a right to claim compensation and to appeal will have an impact upon Legal Services.

(c) Resources (Financial, Risks, Staffing and Property)

The proposed changes and new regulations will require staff resources to ensure Moray Council procedures comply with legislation when serving new TPO's. There is also a requirement to review the existing TPO's, especially "area" TPO's, which again will require staffing resources. A review of current procedures will clarify when neighbour notification will be appropriate, introduce a standard form for proposed works to trees covered by a TPO and for trees in Conservation areas. Guidance notes and forms will be made available online.

The proposed introduction of compensation claims and the right to appeal would have financial and staffing implications for the Council.

(d) Consultations

Dianne Dawson, paralegal (Commercial and Conveyancing) has been consulted and her comments incorporated into the responses in Appendix 1.

6. CONCLUSION

6.1 The Scottish Government is proposing new Regulations covering Tree Preservation Orders and Trees in Conservation Areas.

- 6.2 The main changes proposed through the new regulations are;**
- **updating the regulations and Model Order to reference the provisions of the Town and Country Planning (Scotland) Act 2006**
 - **The Model Order will no longer be contained within the regulations. It will be guidance with the contents of a TPO ultimately a matter for the planning authority.**
 - **Introducing a new procedure where a TPO is not confirmed. The new procedure ensures that those with an interest and those who made representations are informed of the outcome.**
 - **Introducing to the regulations, procedures for the varying and revoking of TPO's**
 - **Introducing a right of appeal against the planning authority's decision and a right to claim for compensation.**

Author of Report: Gary Templeton, Principal Planning Officer
Background Papers:
Ref: GT

Appendix 1

Q1 Do you have any comments on the Model Order being contained within guidance rather than within the regulations	No objection to the model Order being contained within Guidance.
Q2 Do you agree that neighbour notification should be at the discretion of the planning authority	Yes, agreed. Neighbour notification for all TPO's would involve significant additional staff resources and cost to the local authority. If it is carried out at the discretion of the local authority, where there is clearly a public interest in doing so, then it will be targeted effectively and add value to the process of considering a Tree Preservation Order.
Q3 Do you support the requirement to notify any person who made representations of the planning authority decision.	Yes, although this will again involve additional staff resources. However, in the case of a petition or representations from a community group or organisation, only the nominated signatory representing each group should be notified
Q4 Do you support the proposed procedures where a TPO is not confirmed	Yes, it will improve communication and transparency to the procedure.
Q5 Do you agree with the proposed procedures for varying and revoking TPO's	Yes, these should follow the same procedures as for serving a TPO. However, this will involve additional staff time from Legal and Planning staff.
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.	Yes, this clarifies that permitted development rights do not automatically allow for works to trees covered by a TPO. In terms of planning permission in principle, there is obviously a requirement for co-ordination between officers dealing with the applications for works under the TPO and the planning application. However, the consultation paper is not very clear on this issue and further clarification is required.

<p>Q7 Do you consider that the Model Order should contain exemptions from compensation, if so, what should be included (e.g. less than £500, loss in the development value of the land, or where the loss or damage was foreseeable)</p>	<p>Yes, however the Council is opposed to the proposed change to introduce compensation to the process. A decision made by the Moray Council is made in accordance with an agreed policy in the statutory Moray Local Plan 2008. The policy states that the Council will serve TPO's on potentially vulnerable trees which are of significant amenity value to the community as a whole, or trees of significant biodiversity value. The Council is clearly acting in the interests of the wider community when taking the decision to serve a TPO.</p> <p>The power to appeal against a decision introduces further transparency to the process. This should be a sufficient safeguard without the introduction of a compensation power.</p> <p>The most common concern by landowners is that the TPO will be an unacceptable burden on the land value, restricting what the land can be used for. It is important to recognise that the TPO should encourage good woodland management and that in some instances (perhaps where area TPO's have been served), there may still be scope for development opportunities, where the overall amenity and objectives of the TPO would not be compromised. If the compensation power is introduced then exceptions from compensation should include loss of development value of the land and any loss or damage, which could have been prevented by good woodland/ tree management.</p>
<p>Q8 Do you support the retention of the area classification within Schedule 1.</p>	<p>Yes, in some cases where a larger area of woodland is considered worthy of TPO, it is difficult and extremely resource (time and money) onerous on the local authority to expect a tree survey to cover each tree. The Moray Council has successfully served TPO's using area classifications, whilst realistically respecting the limitations this brings.</p>

Q9 Do you consider that Schedule 1 is sufficient for the identification of the protected trees.	Yes, even when served on an area basis.
Q10 Do you consider that the appeal provisions contained within the model order are sufficient	Yes. Although the Council questions whether there is a role for the newly established Local Review Bodies to deal with TPO appeals. Some of the appeals are likely to be of very local interest and would appear to be most efficiently considered at the local level rather than the Scottish Government.
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 introduces new or additional information then this was not part of the decision making process and should be the subject of a new application rather than an appeal.
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	No, the model order is broadly consistent with the current Orders served by the Moray Council
Q14 Are there any potential impacts on business or voluntary sectors that we should be aware of in finalising the regulations or model order	No comment.
Q15 Are there any potential impacts on particular societal groups that we should be aware of in finalising the regulations or model order.	No comment.
Q16 Do you have any other comments to make on the draft regulations or draft model order.	No comment.