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Guidance

Tree Preservation Orders and trees in conservation areas

Explains the legislation governing Tree Preservation Orders and tree protection in conservation areas.

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Where plans are being prepared under the transitional arrangements set out in Annex 1 to the revised National Planning Policy Framework (<https://www.gov.uk/government/publications/national-planning-policy-framework--2>), the policies in the previous version of the framework published in 2012 (<http://webarchive.nationalarchives.gov.uk/20180608095821/https://www.gov.uk/government/publications/national->

planning-policy-framework--2) will continue to apply, as will any previous guidance which has been superseded since the new framework was published in July 2018. If you'd like an email alert when changes are made to planning guidance please subscribe (<https://www.gov.uk/topic/planning-development/planning-officer-guidance/email-signup>).

Tree Preservation Orders – general

What is a Tree Preservation Order?

A Tree Preservation Order is an order made by a local planning authority in England to protect specific trees, groups of trees or woodlands in the interests of amenity. An Order prohibits

(<http://www.legislation.gov.uk/ukSI/2012/605/regulation/13/made>) the:

- cutting down
- topping
- lopping
- uprooting
- wilful damage
- wilful destruction

of trees without the local planning authority's written consent. If consent is given, it can be subject to conditions which have to be followed. In the Secretary of State's view, cutting roots is also a prohibited activity and requires the authority's consent.

Paragraph: 001 Reference ID: 36-001-20140306

Revision date: 06 03 2014

What are a tree owner's responsibilities?

Owners of protected trees must not carry out, or cause or permit the carrying out of, any of the prohibited activities without the written consent of the local authority. As with owners of unprotected trees, they are responsible for maintaining their trees, with no statutory rules setting out how often or to what standard. The local planning authority cannot require maintenance work to be done to a tree just because it is protected. However, the authority can encourage good tree management, particularly when determining applications for consent under a Tree Preservation Order. This will help to maintain and enhance the amenity provided by protected trees.

Arboricultural advice from competent contractors and consultants, or the authority, will help to inform tree owners of their responsibilities and options. It is important that trees are inspected regularly and necessary maintenance carried out to make sure they remain safe and healthy.

Paragraph: 002 Reference ID: 36-002-20140306

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What are the relevant laws?

The law on Tree Preservation Orders is in Part VIII of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/part/VIII>) as amended and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (<http://www.legislation.gov.uk/uksi/2012/605/contents/made>) which came into force on 6 April 2012. Section 192 of the Planning Act 2008 (<http://www.legislation.gov.uk/ukpga/2008/29/notes/division/6/54/14>) made further amendments to the 1990 Act which allowed for the transfer of provisions from within existing Tree Preservation Orders to regulations. Part 6 of the Localism Act 2011 amended section 210 of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/2011/20/part/6>) concerning time limits for proceedings in regard to non-compliance with Tree Preservation Order regulations.

Paragraph: 003 Reference ID: 36-003-20140306

Revision date: 06 03 2014

What happens to Tree Preservation Orders made before the Town and Country Planning (Tree Preservation) (England) Regulations 2012 came into force on 6 April 2012?

The Town and Country Planning (Tree Preservation)(England) Regulations 2012 (<http://www.legislation.gov.uk/uksi/2012/605/contents/made>) introduced a single set of procedures for all trees covered by tree preservation orders. Consequently:

- Orders made before 6 April 2012 continue to protect the trees or woodlands they cover
- the legal provisions listed in Orders made before 6 April 2012 have been automatically cancelled and replaced by the provisions in the new regulations. Only the information necessary to identify these Orders and identify the trees or woodlands they protect is retained
- there is no need for Orders made before 6 April 2012 to be remade, amended or reissued.

Paragraph: 004 Reference ID: 36-004-20140306

Revision date: 06 03 2014

Who makes Tree Preservation Orders and why?

Local planning authorities can make a Tree Preservation Order (<http://www.legislation.gov.uk/uksi/2012/605/regulation/3/made>) if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area (<http://www.legislation.gov.uk/ukpga/1990/8/section/198>)'.

Authorities can either initiate this process themselves or in response to a request made by any other party. When deciding whether an Order is appropriate, authorities are advised to take into consideration what 'amenity' means in practice, what to take into account when assessing amenity value, what 'expedient' means in practice, what trees can be protected and how they can be identified.

When granting planning permission authorities have a duty

(<http://www.legislation.gov.uk/ukpga/1990/8/section/197>) to ensure, whenever appropriate, that planning conditions are used to provide for tree preservation and planting. Orders should be made in respect of trees where it appears necessary in connection with the grant of permission (<https://www.gov.uk/guidance/use-of-planning-conditions>).

Flowchart 1 shows the process for making an Order.

Paragraph: 005 Reference ID: 36-005-20140306

Revision date: 06 03 2014

Can county councils make Tree Preservation Orders?

County councils can make Tree Preservation Orders but there are restrictions

(<http://www.legislation.gov.uk/ukpga/1990/8/schedule/1/paragraph/13>) in areas where there is both a district planning authority and a county planning authority. In these areas the county council may only make an Order:

- where necessary in connection with the grant of planning permission
- on land which is not wholly lying within the area of a single district council
- on land in which the county council holds an interest.

Paragraph: 006 Reference ID: 36-006-20140306

Revision date: 06 03 2014

What does 'amenity' mean in practice?

'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.

Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

Paragraph: 007 Reference ID: 36-007-20140306

Revision date: 06 03 2014

What might a local authority take into account when assessing amenity value?

When considering whether trees should be protected by an Order, authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria:

Visibility

The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

Individual, collective and wider impact

Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:

- size and form;
- future potential as an amenity;
- rarity, cultural or historic value;
- contribution to, and relationship with, the landscape; and
- contribution to the character or appearance of a conservation area.

Other factors

Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.

Paragraph: 008 Reference ID: 36-008-20140306

Revision date: 06 03 2014

What can help local authorities identify trees that may need protection?

An authority's tree strategy may identify localities or populations of trees as priorities for the making or reviewing of Orders. Authorities may also refer to existing registers, recording trees of particular merit, to assist in their selection of trees suitable for inclusion in an Order.

Paragraph: 009 Reference ID: 36-009-20140306

Revision date: 06 03 2014

What does 'expedient' mean in practice?

Although some trees or woodlands may merit protection on amenity grounds it may not be expedient to make them the subject of an Order. For example, it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management.

It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.

Paragraph: 010 Reference ID: 36-010-20140306

Revision date: 06 03 2014

What trees can be protected?

An Order can be used to protect individual trees, trees within an area, groups of trees or whole woodlands. Protected trees can be of any size or species.

Orders covering a woodland protect the trees and saplings of whatever size within the identified area, including those planted or growing naturally after the Order was made. This is because the purpose of the Order is to safeguard the woodland as a whole, which depends on regeneration or new planting.

Paragraph: 011 Reference ID: 36-011-20140306

Revision date: 06 03 2014

Can shrubs and hedges be protected by a Tree Preservation Order?

Authorities may only use an Order to protect anything that may ordinarily be termed a tree. This would not normally include shrubs, but could include, for example, trees in a hedge or an old hedge which has become a line of trees of a reasonable height. The removal of countryside hedgerows is regulated under different legislation (<https://www.gov.uk/guidance/countryside-hedgerows-regulation-and-management>). See guidance on tree size in conservation areas.

Paragraph: 012 Reference ID: 36-012-20140306

Revision date: 06 03 2014

What if trees are on Forestry Commission, Crown or local authority land, in a churchyard or in, or near, an aerodrome or scheduled monument?

Special considerations apply in some of these circumstances.

Paragraph: 013 Reference ID: 36-013-20140306

Revision date: 06 03 2014

Trees and Forestry Commission, Crown or local authority land, churchyards, aerodromes and scheduled monuments

What if trees are on land owned or managed by the Forestry Commission or in which it has an interest?

Local planning authorities are encouraged to liaise with the Forestry Commission (<http://www.forestry.gov.uk/england>) when considering making a Tree Preservation Order on land in which the Forestry Commission has an interest. The Regulations will have no effect (<http://www.legislation.gov.uk/ukpga/1990/8/section/200>) in respect of anything done by, or on behalf of, the Forestry Commission on land it owns or manages (the Public Forest Estate) or in which it has an interest. This is also the case in respect of works done by or on behalf of a person under a working plan or plan of operations, approved by the Forestry Commission under:

- an existing forestry dedication covenant;
- a grant scheme or loan administered by the Forestry Commission; and/or
- If an authority identifies trees which it would have made subject to an Order but for the Forestry Commission's interest in the land, it may ask the Commission to let it know when that interest in the land is likely to cease.

Paragraph: 014 Reference ID: 36-014-20140306

Revision date: 06 03 2014

What if trees are on Crown land?

Authorities may make Orders relating to Crown land without the consent of the appropriate Crown body (known as the 'appropriate authority (<http://www.legislation.gov.uk/ukpga/2004/5/schedule/3>)'). However, when considering protecting trees on Crown land authorities are advised to discuss the matter with that body.

Paragraph: 015 Reference ID: 36-015-20140306

Revision date: 06 03 2014

What if trees are on local authority land?

Local planning authorities may make Orders in relation to land that they own.

Paragraph: 016 Reference ID: 36-016-20140306

Revision date: 06 03 2014

What if trees are in a churchyard?

Trees in churchyards may be protected by an Order. When considering protecting trees in churchyards authorities are advised to liaise with the relevant diocese.

Paragraph: 017 Reference ID: 36-017-20140306

Revision date: 06 03 2014

What if trees are on or near an aerodrome?

Authorities considering making an Order on or near civil or military aerodromes are advised to consult the owner or operator, or the Ministry of Defence.

Paragraph: 018 Reference ID: 36-018-20140306

Revision date: 06 03 2014

What if trees are within or near a scheduled monument?

Authorities are advised to consult Historic England (<http://www.historicengland.org.uk/>) before making Orders on trees within or close to a scheduled monument (<http://www.legislation.gov.uk/ukpga/1979/46>).

Paragraph: 019 Reference ID: 36-019-20140306

Revision date: 06 03 2014

Making Tree Preservation Orders

How are Tree Preservation Orders made?

If a local planning authority makes an Order, it will serve notice on people with an interest in the land, inviting representations about any of the trees covered by the Order. A copy of the Order will also be made available for public inspection. Following consideration of any objections and comments (<http://www.legislation.gov.uk/uksi/2012/605/regulation/6/made>) the authorities can decide whether or not to confirm the Order.

Flowchart 1 shows the process for making and confirming a Tree Preservation Order.

Paragraph: 020 Reference ID: 36-020-20140306

Revision date: 06 03 2014

Is a site visit needed?

Before making an Order a local planning authority officer should visit the site of the tree or trees in question and consider whether or not an Order is justified. Further site visits may be appropriate following emergency situations where on the initial visit the authority did not fully assess the amenity value of the trees or woodlands concerned.

Paragraph: 021 Reference ID: 36-021-20140306

Revision date: 06 03 2014

What evidence should be collected on a site visit?

Where a Tree Preservation Order may be justified, the officer should gather sufficient information to enable an accurate Order to be drawn up. The officer should record the number and species (or at least the genus) of the individual trees or groups of trees to be included in the Order and their location. A general description of genera should be sufficient for areas of trees or woodlands. It is, however, important to gather enough information to be able to accurately map their boundaries.

The officer should also record other information that may be essential or helpful in the future. This may include:

- information on any people with a legal interest in the land affected by the Order (further guidance can be found in paragraph 32 and paragraph 33;
- the present use of the land;
- the tree's or trees' importance as a wildlife habitat; and/or
- trees which are not to be included in the Order.

Paragraph: 022 Reference ID: 36-022-20140306

Revision date: 06 03 2014

Does the local planning authority have rights of entry to make a Tree Preservation Order?

Any person duly authorised in writing by the authority may enter land (<http://www.legislation.gov.uk/ukpga/1990/8/section/214B>) for the purpose of surveying it in connection with making or confirming an Order if there are reasonable grounds for entering for that purpose. However, the authority cannot enter Crown land (<http://www.legislation.gov.uk/ukpga/1990/8/section/325A>) without consent from the appropriate Crown body (<http://www.legislation.gov.uk/ukpga/1990/8/section/293>).

Paragraph: 023 Reference ID: 36-023-20140306

Revision date: 06 03 2014

How should the Tree Preservation Order be presented?

The Order must be set out using the standard form (<http://www.legislation.gov.uk/uksi/2012/605/regulation/3/made>) of Order in the Schedule to the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (<http://www.legislation.gov.uk/uksi/2012/605/schedule/made>) (or in a form substantially to the same effect). A Word version of the standard form is available (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82790/120405_-_2012_-_Form_of_Tree_Preservation_Order-Arial_FINAL.doc).

The Order must specify the trees or woodlands as being within 4 categories (individual, area, group and woodland). Any combination of these categories may be used in a single Order. The Order must also include, or have annexed to it, a map (<http://www.legislation.gov.uk/uksi/2012/605/regulation/3/made>) giving a

clear indication of the position of the protected trees, groups of trees or woodlands.

Paragraph: 024 Reference ID: 36-024-20140306

Revision date: 06 03 2014

How accurate does the description and location of trees need to be in an Order?

The legislation does not require authorities to describe the trees in the Order with full scientific names or plot them on the map with pinpoint accuracy. But authorities should bear in mind that successful prosecutions for contravening Orders will be difficult where Orders do not show clearly which trees are meant to be protected.

The standard form of Order (<http://www.legislation.gov.uk/ukxi/2012/605/schedule/made>) provides examples of how information should be recorded in a schedule. Authorities are advised to enter 'None' against any categories not used in the Order.

Paragraph: 025 Reference ID: 36-025-20140306

Revision date: 06 03 2014

When should the individual category be used?

If trees merit protection in their own right, authorities should specify them as individual trees in the Order.

Paragraph: 026 Reference ID: 36-026-20140306

Revision date: 06 03 2014

When should the group category be used?

The group category should be used to protect groups of trees where the individual category would not be appropriate and the group's overall impact and quality merits protection.

Paragraph: 027 Reference ID: 36-027-20140306

Revision date: 06 03 2014

When should the woodland category be used?

The woodland category's purpose is to safeguard a woodland as a whole. So it follows that, while some trees may lack individual merit, all trees within a woodland that merits protection are protected and made subject to the same provisions and exemptions. In addition, trees and saplings which grow naturally or are planted within the woodland area after the Order is made are also protected by the Order.

It is unlikely to be appropriate to use the woodland classification in gardens.

The woodland category should not hinder beneficial woodland management. Whether or not they make an Order, authorities can consider encouraging landowners to bring their woodlands into proper management under the grant schemes run by the Forestry Commission (<http://www.forestry.gov.uk/england>). If a woodland subject to an Order is not brought into such a scheme, authorities can still encourage applications to manage the trees in ways that would benefit the woodland without making a serious impact on local amenity, for example by making a single application for regularly repeated operations.

Paragraph: 028 Reference ID: 36-028-20140306

Revision date: 06 03 2014

When should the area category be used?

The area category is one way of protecting individual trees dispersed over an area. Authorities may either protect all trees within an area defined on the Order's map or only those species which it is expedient to protect in the interests of amenity.

The area category is intended for short-term protection in an emergency and may not be capable of providing appropriate long-term protection. The Order will protect only those trees standing at the time it was made, so it may over time become difficult to be certain which trees are protected. Authorities are advised to only use this category as a temporary measure until they can fully assess and reclassify the trees in the area. In addition, authorities are encouraged to resurvey existing Orders which include the area category.

Paragraph: 029 Reference ID: 36-029-20140306

Revision date: 06 03 2014

When does a Tree Preservation Order come into effect?

An Order comes into effect (<http://www.legislation.gov.uk/uksi/2012/605/regulation/4/made>) on the day the authority makes it. This provisional effect lasts for 6 months, unless the authority first either confirms the Order to provide long-term protection or decides not to confirm it. Further guidance can be found in paragraph 37 and paragraph 38.

Paragraph: 030 Reference ID: 36-030-20140306

Revision date: 06 03 2014

Informing people that a Tree Preservation Order has been made

How does the local planning authority inform people that a Tree Preservation Order has been made?

The local authority must (<http://www.legislation.gov.uk/uksi/2012/605/regulation/5/made>), as soon as practicable after making an Order and before it is confirmed, serve 'persons interested' (<http://www.legislation.gov.uk/uksi/2012/605/regulation/2/made>) in the land affected by the Order':

- a copy of the Order (including the map); and
- a notice (a 'Regulation 5 notice') containing specified information.

The authority must also be able to prove that it has done this in one of a number of different ways (<http://www.legislation.gov.uk/ukpga/1990/8/section/329>). In addition, the authority must make available a copy of the Order at its offices.

Paragraph: 031 Reference ID: 36-031-20140306

Revision date: 06 03 2014

Who must the local authority inform?

The 'persons interested in the land affected by the Order' are every owner and occupier of the land on which the protected trees stand and every other person the authority knows is entitled to carry out certain works (<http://www.legislation.gov.uk/uksi/2012/605/regulation/2/made>) to any of those trees or in relation to the affected land.

The authority may decide to notify other people, groups, authorities and organisations (such as parish councils and the Forestry Commission). It can also consider displaying site notices.

Paragraph: 032 Reference ID: 36-032-20140306

Revision date: 06 03 2014

What must be in a Regulation 5 notice?

A Regulation 5 notice (<http://www.legislation.gov.uk/uksi/2012/605/regulation/5/made>) must:

- state the reasons for making the Order;
- explain that objections or representations about any of the trees, groups of trees or woodlands covered by the Order may be made to the authority in accordance with Regulation 6 (<http://www.legislation.gov.uk/uksi/2012/605/regulation/6/made>);
- contain a copy of Regulation 6; and
- specify a date (at least 28 days after the date of the notice) by which any objection or representation must be received by the authority.

Paragraph: 033 Reference ID: 36-033-20140306

Revision date: 06 03 2014

Commenting on newly made Tree Preservation Orders

Can people object to, or comment on, a Tree Preservation Order?

People must be given the opportunity to object to, or comment on, a new Tree Preservation Order. Before deciding whether to confirm an Order, the local authority must take into account all 'duly made (<http://www.legislation.gov.uk/uksi/2012/605/regulation/6/made>)' objections and representations that have not been withdrawn.

Objections and representations are duly made if:

- They are made in writing and:
 - delivered to, or could reasonably be expected to be delivered to, the authority not later than the date specified in the Regulation 5 notice;
 - specify the particular trees, groups of trees or woodlands in question;
 - in the case of an objection, state the reasons for the objection;
- In a particular case, the authority is satisfied that compliance with the above requirements could not reasonably have been expected.

Paragraph: 034 Reference ID: 36-34-20140306

Revision date: 06 03 2014

How long should the local authority allow for people to make representations?

The authority should ensure that all notified parties are given at least 28 days from the date of the notice to submit their representations.

Paragraph: 035 Reference ID: 36-035-20140306

Revision date: 06 03 2014

Are the reasons for objecting restricted?

Objections to a new Tree Preservation Order can be made on any grounds.

Paragraph: 036 Reference ID: 36-036-20140306

Revision date: 06 03 2014

Confirming Tree Preservation Orders

How do local planning authorities confirm Tree Preservation Orders?

Authorities can confirm Orders (<http://www.legislation.gov.uk/uksi/2012/605/regulation/7/made>), either without modification or with modification, to provide long-term tree protection. They may also decide not to confirm the Order, which will stop its effect. Authorities cannot confirm an Order unless they have first considered any duly made objections or other representations.

Flowchart 1 shows the process for confirming an Order.

Authorities should bear in mind that, since they are responsible for making and confirming Orders, they are in effect both proposer and judge. They should therefore consider how best to demonstrate that they have made their decisions at this stage in an even-handed and open manner.

Paragraph: 037 Reference ID: 36-037-20140306

Revision date: 06 03 2014

Is there a time limit for confirming Orders?

Authorities can only confirm (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/4/made>) an Order within a 6 month period beginning with the date on which the Order was made. If this deadline is missed and an authority still considers protection necessary it will have to make a new Order.

Paragraph: 038 Reference ID: 36-038-20140306

Revision date: 06 03 2014

Can the authority confirm a modified Order?

The authority can decide to confirm an Order in relation to some, but not all, of the trees originally specified in the Order it made.

Paragraph: 039 Reference ID: 36-039-20140306

Revision date: 06 03 2014

What changes to an Order should not be confirmed by the authority?

The authority should not confirm an Order it has modified by adding references to trees, groups of trees or woodlands in the Schedule to the Order or the map to which the Order did not previously apply. Nor should the authority confirm an Order if it has made substantial changes to it, for example by changing an area classification to a woodland classification. To protect additional trees or make other significant changes the authority should consider either varying the Order after it has been confirmed or making a further Order.

Paragraph: 040 Reference ID: 36-040-20140306

Revision date: 06 03 2014

How does the authority modify an Order?

It must clearly indicate modifications on the Order, for example by using distinctive type.

Paragraph: 041 Reference ID: 36-041-20140306

Revision date: 06 03 2014

How does the authority confirm an Order?

The authority must make a formal note of its final decision by endorsing (<http://www.legislation.gov.uk/uksi/2012/605/regulation/7/made>) the Order and recording the date. The standard form of Order (<http://www.legislation.gov.uk/uksi/2012/605/schedule/made>) shows what information is required.

Paragraph: 042 Reference ID: 36-042-20140306

Revision date: 06 03 2014

What does the authority do if it decides not to confirm an Order?

After deciding not to confirm an Order the authority must still record (<http://www.legislation.gov.uk/uksi/2012/605/regulation/9/made>) this decision on endorsing the Order. The Order's effect will stop on the date of its decision, which must be recorded on the Order. The standard form of Order (<http://www.legislation.gov.uk/uksi/2012/605/schedule/made>) shows what information is required.

Paragraph: 043 Reference ID: 36-043-20140306

Revision date: 06 03 2014

How should the authority inform people about its decisions?

When the authority has decided to confirm an Order it should, as soon as practicable, notify (<http://www.legislation.gov.uk/uksi/2012/605/regulation/8/made>) all people previously served with the made Order. They should be notified of the:

- order's confirmation;
- date it was confirmed;
- time within which an application may be made to the High Court; and
- grounds on which an application to the High Court may be made.

If the authority has confirmed the Order with modifications, then it should serve a copy (<http://www.legislation.gov.uk/ukpga/1990/8/section/329>) of the Order as confirmed.

If the authority has decided not to confirm an Order it should promptly notify all people previously served with the made Order and withdraw the publicly available copy.

Paragraph: 044 Reference ID: 36-044-20140306

Revision date: 06 03 2014

How can the public get access to Tree Preservation Orders?

The authority should make a copy of the Order as confirmed available for public inspection (<http://www.legislation.gov.uk/uksi/2012/605/regulation/5/made>) at its offices, replacing the copy of the made Order. In addition, a confirmed Order should be recorded promptly in the local land charges register as a charge on the land on which the trees are standing. It is not a charge on any other land.

Authorities should consider how best to be in a position to respond to enquiries about whether particular trees in their area are protected.

Paragraph: 045 Reference ID: 36-045-20140306

Revision date: 06 03 2014

Is there a right of appeal against made or confirmed Tree Preservation Orders?

The legislation provides no right of appeal to the Secretary of State against an authority either making or confirming an Order. There is, however, a right of appeal to the Secretary of State following an application to carry out work on trees protected by an Order that is refused, granted subject to conditions, or not determined.

Paragraph: 046 Reference ID: 36-046-20140306

Revision date: 06 03 2014

Can the validity of a Tree Preservation Order be challenged?

The validity of an Order (<http://www.legislation.gov.uk/ukpga/1990/8/section/284>) cannot be challenged in any legal proceedings except by way of application to the High Court on a point of law. The Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/288>) and the Civil Procedure Rules 1998 (<http://www.justice.gov.uk/courts/procedure-rules/civil>) set out the application process.

Anyone considering challenging the validity of an Order in the High Court is advised to seek legal advice.

Paragraph: 047 Reference ID: 36-047-20140306

Revision date: 06 03 2014

Varying and revoking Tree Preservation Orders

Can local planning authorities vary or revoke Tree Preservation Orders?

Local planning authorities have powers to vary (change) or revoke (cancel) their Orders (<http://www.legislation.gov.uk/ukpga/1990/8/schedule/1/paragraph/13>). Authorities must use the procedures set out in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 to vary (<http://www.legislation.gov.uk/uksi/2012/605/regulation/10/made>) or revoke (<http://www.legislation.gov.uk/uksi/2012/605/regulation/11/made>) any of their Orders.

Paragraph: 048 Reference ID: 36-048-20140306

Revision date: 06 03 2014

What is the decision-making process for varying or revoking a Tree Preservation Order?

Flowchart 2 shows the decision-making process for varying or revoking Orders

Paragraph: 049 Reference ID: 36-049-20140306

Revision date: 06 03 2014

Why do local authorities vary or revoke Orders?

Authorities can vary or revoke confirmed Orders to help deliver appropriate tree protection. They may decide to vary or revoke Orders because, for example:

- land has been developed;
- trees standing when the Order was made have been removed (lawfully or otherwise);
- replacement trees have been planted;
- trees, for whatever reason, no longer merit protection by an Order;
- new trees meriting protection by an Order have been planted;
- the map included in the original Order is now unreliable;
- the Order includes classifications that no longer provide appropriate or effective tree protection; or
- errors in the Order's Schedule or map have come to light.

Paragraph: 050 Reference ID: 36-050-20140306

Revision date: 06 03 2014

Why do authorities review their Orders?

Reassessing Orders helps to ensure that protection is still merited and Orders contain appropriate classifications. So authorities are advised to keep their Orders under review. For example, authorities should consider reviewing Orders protecting trees and woodlands affected by development or other change in land use since the Order was made. In addition, authorities may wish to set up a programme to review Orders that include the area classification.

Paragraph: 051 Reference ID: 36-051-20140306

Revision date: 06 03 2014

How do authorities vary Orders?

The requirements (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/10/made>) an authority must meet when varying an Order will depend on whether or not additional trees will be protected.

Paragraph: 052 Reference ID: 36-052-20140306

Revision date: 06 03 2014

How does an authority vary an Order without adding trees?

The local authority should make a formal 'variation order' that identifies the Order being varied, the variations made and the date the variation order is made. It must endorse the original Order with a statement that it has been varied and specifying the date on which the variation order takes effect. The standard form of Order (<http://www.legislation.gov.uk/ukxi/2012/605/schedule/made>) includes a draft endorsement for variation.

The authority must make a copy of the variation order available for public inspection. It must also notify people interested in the land affected by the variation Order. The authority must serve a copy of the variation Order on such people along with a statement explaining the effect of the variation. The authority has discretion whether to undertake wider notification and publicity if it considers this would be appropriate.

Paragraph: 053 Reference ID: 36-053-20140306

Revision date: 06 03 2014

How does an authority vary an Order to add trees?

If an authority wants to vary an Order to add new trees, it must follow procedures additional to those for varying an Order without adding trees. These are similar to those for making and confirming a new Order. The authority decides whether or not the variation Order should be confirmed and cannot confirm it without first considering any duly made objections and representations.

Paragraph: 054 Reference ID: 36-054-20140306

Revision date: 06 03 2014

What if an authority decides not to confirm a variation order that adds trees?

Where an authority decides not to confirm a variation order that adds trees it must:

- endorse the variation Order, recording its decision not to confirm the variation order, including the date of the decision;
- notify the people who were affected by the variation order of its decision; and
- withdraw from public inspection the copy of the variation order which was made available when it was first made.

Paragraph: 055 Reference ID: 36-055-20140306

Revision date: 06 03 2014

How do authorities revoke Orders?

Where an Authority intends to revoke an Order, it can consider notifying or consulting local people and groups, authorities and organisations. It can also consider some form of publicity.

Where an authority decides to revoke an Order it must then follow the procedures (<http://www.legislation.gov.uk/uksi/2012/605/regulation/11/made>) set out in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Flowchart 2 shows the process for revoking Orders.

Paragraph: 056 Reference ID: 36-056-20140306

Revision date: 06 03 2014

What if an authority wants to revoke and replace an Order?

Authorities can revoke an Order and at the same time make a new Order or new Orders to take its place. For example, an authority may wish to replace an Order containing an area classification with new Orders protecting individual trees or groups of trees. In such cases authorities should bear in mind any unfinished matters relating to the old Order. For example, an authority might have to take into account an unfulfilled condition or notice requiring a replacement tree, or an ongoing appeal.

Paragraph: 057 Reference ID: 36-057-20140306

Revision date: 06 03 2014

Making applications to carry out work on trees protected by a Tree Preservation Order

How is an application made to carry out work on trees protected by a Tree Preservation Order?

Apart from limited exceptions, permission must be sought from the local planning authority by submitting a standard application form. The form is available from the Planning Portal (<https://www.planningportal.co.uk/applications>) or the authority. It is important that the information on the form makes clear what the proposed work is and provides adequate information to support the case.

Flowchart 3 shows the process for applications to carry out work to protected trees.

Paragraph: 058 Reference ID: 36-058-20140306

Revision date: 06 03 2014

Is permission needed to carry out all work on trees protected by a Tree Preservation Order?

Anyone wanting to cut down, top, lop or uproot trees subject to an Order must (<http://www.legislation.gov.uk/uksi/2012/605/regulation/13/made>) first apply to the local planning authority (<http://www.legislation.gov.uk/uksi/2012/605/regulation/16/made>) for its consent unless the proposed work is exempt through an exception (<http://www.legislation.gov.uk/uksi/2012/605/regulation/14/made>). Where an exception applies the authority's consent to carry out works is not needed, but notice of those works may need to be given to the authority.

There are further exceptions (<http://www.legislation.gov.uk/uksi/2012/605/regulation/15/made>) relating to trees growing in a conservation area that are not subject to an Order.

Tree owners, their agents and contractors, statutory undertakers and other bodies should take care not to exceed an exception. Before carrying out work they believe is exempt, they may wish to obtain advice from a qualified arboriculturist and/or confirmation from the authority of what is and what is not required.

If an authority receives notice of work under any exception it may decide to inform the notifier that it considers the exemption does not apply and, if necessary, seek injunctive relief in the crown courts.

In addition, the authority's consent is not needed in certain specific circumstances (<http://www.legislation.gov.uk/ukpga/1990/8/section/200>) where the Regulations are deemed to have no effect. This will be the case, for instance, in respect of anything done by, or on behalf of, the Forestry Commission on land it owns or manages or in which it has an interest.

Paragraph: 059 Reference ID: 36-059-20140306

Revision date: 06 03 2014

What are the exceptions relating to trees subject to an Order?

An exception (<http://www.legislation.gov.uk/uksi/2012/605/regulation/14/made>) may exempt landowners or their agents from the normal requirement to seek the local planning authority's consent before carrying out work on trees subject to an Order. These exceptions include certain work:

- on dead trees and branches;
- on dangerous trees and branches;
- to comply with an Act of Parliament;
- to prevent or abate a nuisance;
- necessary to implement a planning permission;
- on fruit trees;
- by or for statutory undertakers;
- for highway operations;
- by the Environment Agency and drainage bodies; and
- for national security purposes.

Paragraph: 060 Reference ID: 36-060-20140306

Revision date: 06 03 2014

Is consent required for work on diseased and/or dying trees?

The local planning authority's consent is needed for carrying out work on diseased and/or dying trees unless some other exemption applies. One example is work urgently necessary to remove an immediate risk of serious harm. Another example is government authorities requiring the destruction of particular

trees to tackle a serious plant disease (<http://www.forestry.gov.uk/forestry/infd-8naduy>). If they serve a notice under plant health legislation this would constitute an obligation by or under an Act of Parliament.

Paragraph: 061 Reference ID: 36-061-20140306

Revision date: 06 03 2014

What about tree work that may affect birds, bats and other wildlife?

Anyone carrying out work to a tree, even under an exception, should ensure they do not contravene laws protecting wildlife. If in doubt they are advised to seek advice from the authority or Natural England (<https://www.gov.uk/government/organisations/natural-england>) on how to proceed.

Paragraph: 062 Reference ID: 36-062-20140306

Revision date: 06 03 2014

Who can apply for consent under a Tree Preservation Order?

Anyone can apply for consent under an Order. The applicant will usually be the owner of the tree or trees in question or an arboricultural contractor or other person acting as the applicant's agent.

Also, a person can apply to carry out work on a neighbour's protected tree. But such an applicant is advised to first consult the tree's owner and also notify them promptly after submitting their application. The authority may ask the applicant about their legal interest in the tree and consult the tree's owner. If the authority grants consent it will be for the applicant to get any necessary permission (for access to the land, for example) from the owner, before carrying out the work.

Paragraph: 063 Reference ID: 36-063-20140306

Revision date: 06 03 2014

Can people talk to the local authority before making an application?

A potential applicant or their agent may wish to first discuss the proposal informally with the authority. The authority should consider visiting the site at this stage.

Early discussion will give the authority a chance to:

- explain whether the work proposed is exempt from the need to apply for consent or requires an application to the Forestry Commission rather than the authority;
- guide the applicant generally about Tree Preservation Order procedures and the authority's policies; and
- give advice on presenting an application.

Where there has been no pre-application discussion the applicant may, after discussion with the authority, still modify the application in writing or withdraw it and submit a new one. But authorities should never prolong this discussion to apply pressure on the applicant to agree to unwanted changes.

Paragraph: 064 Reference ID: 36-064-20140306

Revision date: 06 03 2014

How are applications made in order to be valid?

To be valid, an application for works to trees covered by a Tree Preservation Order must:

- be made to the authority on the standard application form published by the Secretary of State and available on the Planning Portal (<https://www.planningportal.co.uk/>) website or from the authority;
- include the information required by the form (the guidance notes for the standard form (https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-works_to_trees.pdf) help applicants provide the necessary information);
- be accompanied by a plan which clearly identifies the tree or trees on which work is proposed;
- be accompanied by such information as is necessary to clearly specify the work for which consent is sought;
- state the reasons for making the application; and
- be accompanied, as applicable, by appropriate evidence describing any structural damage to property or in relation to tree health or safety.

Paragraph: 065 Reference ID: 36-065-20140306

Revision date: 06 03 2014

How detailed should the plan be?

The applicant is not necessarily required to provide a formal scaled location or site plan. But the plan must identify clearly the tree or trees in question and, where appropriate, should identify main features of property affected by the application.

Paragraph: 066 Reference ID: 36-066-20140306

Revision date: 06 03 2014

How detailed should the description of proposed work be?

It is essential that an application sets out clearly what work is proposed. This will help the authority to ensure that approved work has not been exceeded and support enforcement. Applicants are advised not to submit their applications until they are in a position to present clear proposals. Authorities must not consider applications that do not meet the applicable procedural requirements (<http://www.legislation.gov.uk/uksi/2012/605/regulation/16/made>).

When applying for consent to remove trees, applicants should include their proposals for replacement planting. Prior discussion with the applicant should help the authority to set a mutually acceptable condition that makes clear the number, size, species and location of the replacement trees and the period within which they are to be planted.

Paragraph: 067 Reference ID: 36-067-20140306

Revision date: 06 03 2014

How much information does an applicant have to give?

Applicants must provide reasons for proposed work. They should demonstrate that the proposal is a proportionate solution to their concerns and meets the requirements of sound arboriculture. The authority may ask for more information or evidence to help determine an application, but it has no power to require information beyond that specified in the standard application form.

Paragraph: 068 Reference ID: 36-068-20140306

Revision date: 06 03 2014

What supporting information is needed for applications for works to protected trees that relate to alleged damage to property?

It is important that applications suggesting that the proposed tree work is necessary to address tree-related subsidence damage are properly supported by appropriate information. The standard application form requires evidence that demonstrates that the tree is a material cause of the problem and that other factors have been eliminated as potential influences so far as possible. The guidance notes for the standard application form (https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-works_to_trees.pdf) list the requirements.

Applicants should support claims that trees are damaging lighter structures and surfaces, such as garden walls, drains, paving and drives, by providing technical evidence from a relevant engineer, building/drainage surveyor or other appropriate expert.

Paragraph: 069 Reference ID: 36-069-20140306

Revision date: 06 03 2014

What about applications that may affect wildlife?

Applicants, agents and authorities must have regard to statutory obligations concerning protected species. Where there is evidence that protected species such as bats may be present and might be affected by the proposed work the applicant, their agent and the authority should have regard to the relevant legislation and guidance (<https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad/supporting-pages/wildlife-crime>).

Paragraph: 070 Reference ID: 36-070-20140306

Revision date: 06 03 2014

What about applications for more than one operation?

Only one application is needed to carry out a number of different activities on the same tree or to carry out activities on a number of trees.

Where appropriate, authorities should encourage single applications for regularly repeated operations and phased works or programmes of work on trees under good management. In these cases the authority should satisfy itself that the proposed works are appropriate for this type of consent and that the relevant evidence supports this. The authority must ensure that applications clearly specify the proposed works and their timing or frequency.

A programme of works could describe the classes of works which will need to be carried out as routine maintenance during the specified period. A programme including tree felling should be more specific and should, where appropriate, cater for replacement tree planting.

Paragraph: 071 Reference ID: 36-071-20140306

Revision date: 06 03 2014

How can applications be submitted?

The applicant may submit (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/16/made>) the completed application form and accompanying documents to the authority by post, hand or electronic means – fax, email or online through the Planning Portal (https://www.planningportal.co.uk/info/200126/applications/59/how_to_apply/5). It is important that the applicant provides the authority with any additional required information at the same time as the form. Only one copy of each application document needs to be submitted.

Paragraph: 072 Reference ID: 36-072-20140306

Revision date: 06 03 2014

How does the local authority validate an application?

The authority should clearly mark the application with the date of receipt. Before it accepts an application the authority should check that the trees are in fact subject to an Order currently in force and verify that the application (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/16/made>) is both valid and complete (<http://www.legislation.gov.uk/ukpga/1990/8/section/327A>). Authorities should aim to determine validity within 3 working days from the date of receipt.

If the necessary requirements are met, the authority should validate the application. It should assess the quality of additional information submitted with an application form during the determination of the application.

Paragraph: 073 Reference ID: 36-073-20140306

Revision date: 06 03 2014

What about invalid applications?

The authority cannot validate an application that does not satisfy the necessary requirements. If it has not received all the relevant documents and information the authority should declare the application invalid, decline to determine it and inform the applicant of their decision.

If the authority decides an application is invalid the applicant may have the right of appeal.

Paragraph: 074 Reference ID: 36-074-20140306

Revision date: 06 03 2014

What about vague or ambiguous applications?

Where necessary, the authority should consider referring a vague or ambiguous application back to the applicant and ask for clarification. Any necessary minor clarification should be confirmed in writing by the applicant either in a separate letter or by modifying the original application. For significant changes that alter the nature of a proposal, for example where consent is sought for felling instead of pruning, the applicant should withdraw the original application and submit a new one.

Paragraph: 075 Reference ID: 36-075-20140306

Revision date: 06 03 2014

How does the local authority acknowledge a valid application?

The authority should acknowledge receipt in writing, confirming the date on which the complete application was received and the date after which an appeal may be made against non-determination. The authority can briefly explain whether or not it will be inviting comments on the application from local residents, authorities or groups, and whether it intends to visit the site.

Paragraph: 076 Reference ID: 36-076-20140306

Revision date: 06 03 2014

How does the local authority publicise applications?

The authority must keep a register (<http://www.legislation.gov.uk/uksi/2012/605/regulation/12/made>) of all applications for consent under an Order. This register must be available for inspection by the public at all reasonable hours. Authorities are encouraged to make their registers available online. Where local people might be affected by an application or where there is likely to be a good deal of public interest, the authority should consider displaying a site notice or notifying the residents, authorities or groups affected. In addition, where a neighbour submits an application, the authority should make sure the owner or occupier of the land on which the tree stands is informed and given a chance to comment.

Paragraph: 077 Reference ID: 36-077-20140306

Revision date: 06 03 2014

Can the applicant appeal if the authority does not validate their application?

The applicant has the right to appeal to the Secretary of State if an authority fails to determine an application within an 8-week period (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/19/made>).

Paragraph: 078 Reference ID: 36-078-20140306

Revision date: 06 03 2014

Exceptions relating to applications to carry out work on trees subject to a Tree Preservation Order

What are the exceptions for work on dead trees and branches?

Unless work is urgently necessary because there is an immediate risk of serious harm, 5 working days prior written notice must be given to the authority before cutting down or carrying out other work on a dead tree. The authority's consent for such work is not required.

The exceptions allow removal of dead branches from a living tree without prior notice or consent.

Tree owners, their agents and authorities should consider biodiversity. Dead trees and branches can provide very valuable habitats for plants and wildlife, which may also be protected under other legislation. To conserve biodiversity it can be good practice to retain dead wood on living trees and at least the lower trunk of dead 'ancient' or 'veteran' trees unless, for example, safety reasons justify removal. Safety has priority, but safety considerations may not necessitate removal of all dead branches on living trees or the whole of a dead tree. It may be helpful to seek expert arboricultural and ecological advice.

Where a dead tree not covered by the woodland classification is removed, the landowner has a duty to plant a replacement tree (<http://www.legislation.gov.uk/ukpga/1990/8/section/206>).

Paragraph: 079 Reference ID: 36-079-20140306

Revision date: 06 03 2014

What is the exception for work on dangerous trees and branches?

Where a tree presents an immediate risk of serious harm and work is urgently needed to remove that risk, tree owners or their agents must give written notice to the authority as soon as practicable after that work becomes necessary. Work should only be carried out to the extent that it is necessary to remove the risk.

In deciding whether work to a tree or branch is urgently necessary because it presents an immediate risk of serious harm, the Secretary of State's view is that there must be a present serious safety risk. This need not be limited to that brought about by disease or damage to the tree. It is sufficient to find that, by virtue of the state of a tree, its size, its position and such effect as any of those factors have, the tree presents an immediate risk of serious harm that must be dealt with urgently. One consideration would be to look at what is likely to happen, such as injury to a passing pedestrian.

If the danger is not immediate the tree does not come within the meaning of the exception.

Where a tree is not covered by the woodland classification and is cut down because there is an urgent necessity to remove an immediate risk of serious harm, the landowner has a duty to plant a replacement tree of an appropriate size and species (<http://www.legislation.gov.uk/ukpga/1990/8/section/206>).

Paragraph: 080 Reference ID: 36-080-20140306

Revision date: 06 03 2014

What is the exception for work to comply with an Act of Parliament?

The authority's consent is not required for carrying out work on trees and woodlands subject to an Order if that work is in compliance with any obligation imposed by or under an Act of Parliament. This exception will apply, for example, where the Forestry Commission has granted a felling licence (<http://www.forestry.gov.uk/forestry/infd-6dfk86>) under the Forestry Act 1967.

Paragraph: 081 Reference ID: 36-081-20140306

Revision date: 06 03 2014

What is the exception for work to prevent or abate a nuisance?

The authority's consent is not required for carrying out the minimum of work on a tree protected by an Order that is necessary to prevent or abate a nuisance. Here 'nuisance' is used in its legal sense, not its general sense. The courts have held that this means the nuisance must be actionable in law – where it is causing, or there is an immediate risk of it causing, actual damage.

When deciding what is necessary to prevent or abate a nuisance, tree owners and, where applicable, their neighbours and local authorities, should consider whether steps other than tree work might be taken. For example, there may be engineering solutions for structural damage to buildings.

Paragraph: 082 Reference ID: 36-082-20140306

Revision date: 06 03 2014

Is there an exception for tree work relating to planning permission and permitted development?

The authority's consent is not required for carrying out work on trees subject to an Order so far as such work is necessary to implement a full planning permission. For example, the Order is overridden if a tree has to be removed to make way for a new building for which full planning permission has been granted. Conditions or information attached to the permission may clarify what work is exempt.

However, the authority's consent is required for work on trees subject to an Order if:

- development under a planning permission has not been commenced within the relevant time limit (ie the permission has 'expired');
- only outline planning permission has been granted; and

- it is not necessary to carry out works on protected trees in order to implement a full planning permission.

The authority's consent is also required, for example, for work on trees protected by an Order that is necessary to implement permitted development rights under the Town and Country Planning (General Permitted Development) Order 2015 (<http://www.legislation.gov.uk/uksi/2015/596/contents/made>).

Paragraph: 083 Reference ID: 36-083-20150415

Revision date: 15 04 2015 See previous version

(<http://webarchive.nationalarchives.gov.uk/20140310225838/http://planningguidance.planningportal.gov.uk/blog/guidance/tree-preservation-orders/making-applications-to-carry-out-work-on-trees-protected-by-a-tree-preservation-order/exceptions-relating-to-applications-to-carry-out-work-on-trees-subject-to-a-tree-preservation-order/>)

What is the exception for work to fruit trees?

The authority's consent is not required for carrying out work on a tree subject to an Order and cultivated for the production of fruit in the course of a business or trade if the work is in the interests of that business or trade.

The authority's consent is otherwise generally required for carrying out prohibited activities to a fruit tree protected by an Order and not cultivated on a commercial basis. However, the authority's consent is not needed before pruning any tree cultivated for the production of fruit, as long as the work is carried out in accordance with good horticultural practice.

Paragraph: 084 Reference ID: 36-084-20140306

Revision date: 06 03 2014

What is the exception for work by or for statutory undertakers?

The authority's consent is not required in certain circumstances for work carried out by, or at the request of, those statutory undertakers listed in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (<http://www.legislation.gov.uk/uksi/2012/605/regulation/14/made>). These statutory undertakers, or contractors working at their request, are advised to liaise with local authorities prior to carrying out work to trees protected by an Order. It is expected that all vegetation control is carried out in accordance with best arboricultural practice. They should also take care to not contravene the provisions of legislation protecting plants and wildlife.

Paragraph: 085 Reference ID: 36-085-20140306

Revision date: 06 03 2014

Is there an exception for work relating to highway operations?

The authority's consent is not required for cutting down, topping, lopping or uprooting a tree protected by an Order to enable the implementation of a highway order or scheme made or confirmed by the Secretary of State for Transport under Schedule 1 of the Highways Act 1980 (<http://www.legislation.gov.uk/ukpga/1980/66/schedule/1>).

Paragraph: 086 Reference ID: 36-086-20140306

Revision date: 06 03 2014

What are the exceptions for work by or for the Environment Agency and drainage bodies?

The Environment Agency (<https://www.gov.uk/government/organisations/environment-agency>) does not need to obtain the authority's consent before cutting down, topping, lopping or uprooting trees protected by an Order to enable it to carry out its permitted development rights. Similarly, land drainage boards (<http://www.legislation.gov.uk/ukpga/1991/59/contents>) do not need to obtain consent before cutting down or carrying out certain works to trees protected by an Order.

Paragraph: 087 Reference ID: 36-087-20140306

Revision date: 06 03 2014

What is the exception for work relating to national security?

The authority's consent is not required for carrying out work on trees protected by an Order if that work is urgently necessary for national security purposes.

Paragraph: 088 Reference ID: 36-088-20140306

Revision date: 06 03 2014

Taking decisions on applications for consent under a Tree Preservation Order

What is the decision-making process for applications for consent under a Tree Preservation Order?

In considering an application, the local planning authority should assess the impact of the proposal on the amenity of the area and whether the proposal is justified, having regard to the reasons and additional information put forward in support of it. The authority must be clear about what work it will allow and any associated conditions. Appeals against an authority's decision to refuse consent can be made to the Secretary of State.

In certain circumstances, compensation may be payable by the local planning authority for loss or damage which results from the authority refusing consent or granting consent with conditions. However, there are strict criteria and limitations on what compensation may be payable.

Flowchart 3 shows the decision-making process for applications for consent to undertake work on protected trees.

Paragraph: 089 Reference ID: 36-089-20140306

Revision date: 06 03 2014

How does the local planning authority consider an application?

If the authority did not visit the site before the application was made then an officer should do so at this stage.

The authority should assess whether or not the proposed work is exempt from the requirement to obtain its consent.

When considering an application the authority is advised to:

- assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area;
- consider, in the light of this assessment, whether or not the proposal is justified, having regard to the reasons and additional information put forward in support of it;
- consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions;
- consider whether any requirements apply in regard to protected species;
- consider other material considerations, including development plan policies where relevant; and
- ensure that appropriate expertise informs its decision.

Authorities should bear in mind that they may be liable to pay compensation for loss or damage as a result of refusing consent or granting consent subject to conditions. However, if the authority believes that some loss or damage is foreseeable, it should not grant consent automatically. It should take this factor into account alongside other key considerations, such as the amenity value of the tree and the justification for the proposed works, before reaching its final decision.

Paragraph: 090 Reference ID: 36-090-20140306

Revision date: 06 03 2014

Must there be an arboricultural need for the work?

In general terms, it follows that the higher the amenity value of the tree or woodland and the greater any negative impact of proposed works on amenity, the stronger the reasons needed before consent is granted. However, if the amenity value is lower and the impact is likely to be negligible, it may be appropriate to grant consent even if the authority believes there is no particular arboricultural need for the work.

Paragraph: 091 Reference ID: 36-091-20140306

Revision date: 06 03 2014

What about applications relating to woodland?

An authority dealing with an application relating to woodland must (<http://www.legislation.gov.uk/uksi/2012/605/regulation/17/made>) grant consent so far as accords with good forestry practice unless it is satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area. The UK Forestry Standard (<http://www.forestry.gov.uk/ukfs>) and its supporting guidelines define the government's standards and requirements.

Paragraph: 092 Reference ID: 36-092-20140306

Revision date: 06 03 2014

What about applications relating to a conservation area?

Where an application relates to trees in a conservation area the authority must (<http://www.legislation.gov.uk/ukpga/1990/9/section/72>) pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

Paragraph: 093 Reference ID: 36-093-20140306

Revision date: 06 03 2014

What about a local planning authority making an application to itself?

The authority is responsible for determining applications it makes to itself. It must (<http://www.legislation.gov.uk/uksi/1992/1492/note/made>) publicise such an application by displaying a notice on or near the site for at least 21 days. This site notice must:

- identify the trees and clearly set out the proposed work and the authority's reasons for the application;
- include an address where a copy of the application can be inspected;
- include an address to which any comments about the application should be sent; and
- give a date by which representations have to be made. This must be at least 21 days from the site notice's date of display.

Before reaching its decision the authority must take into account any representations made by the date given in the site notice; and it must give notice of its decision to all people who made representations.

Generally, the decision is to be taken by a committee or officer of the authority other than the one with responsibilities for management of the land in question.

Paragraph: 094 Reference ID: 36-094-20140306

Revision date: 06 03 2014

What can the local planning authority decide?

When determining applications for consent under an Order, the authority may (<http://www.legislation.gov.uk/uksi/2012/605/regulation/17/made>):

- grant consent unconditionally;
- grant consent subject to such conditions as it thinks fit;
- refuse consent.

The authority must decide the application before it, so it should not issue a decision which substantively alters the work applied for. The authority could, however, grant consent for less work than that applied for.

The authority should make absolutely clear in its decision notice what is being authorised. This is particularly important where the authority grants consent for some of the operations in an application and refuses consent for others.

Paragraph: 095 Reference ID: 36-095-20140306

Revision date: 06 03 2014

What about granting consent subject to conditions?

A condition may (<http://www.legislation.gov.uk/uksi/2012/605/regulation/17/made>):

- relate to the planting of replacement trees;
- require further approvals to be obtained from the person giving the consent;
- regulate the standard of the authorised work;
- allow repeated operations to be carried out (works may be carried out only once unless a condition specifies otherwise); and/or
- impose a time limit on the duration of consent other than the default 2 year period.

A condition should:

- relate to the authorised work;
- be fair and reasonable in the circumstances of each case;
- be imposed only where there is a definite need for it; and
- be worded precisely, so the applicant is left in no doubt about its interpretation and the authority is satisfied it can be enforced.

The authority is responsible for enforcing all conditions in a consent, so its decision notice should clearly state the reasons for its conditions. This is particularly important where repeated operations have been applied for. In such cases the authority should make the scope, timing and limit of the work clear.

The authority should use its power to impose conditions to ensure that tree work or planting is carried out in accordance with good arboricultural practice.

Paragraph: 096 Reference ID: 36-096-20140306

Revision date: 06 03 2014

What about conditions requiring tree replacement?

If an authority grants consent for a tree to be felled and wishes there to be a replacement tree or trees, it must make this a condition within the decision. If it does not make such a condition it cannot serve a tree replacement notice requiring replacement.

Where an authority grants consent for work in woodland that does not require a felling licence (<http://www.forestry.gov.uk/forestry/infd-6dfk86>) it may impose a condition to replant the land. The authority may wish to consult the Forestry Commission (<http://www.forestry.gov.uk/england>) on the details of such a condition.

The authority may enforce replanting by serving a tree replacement notice on the landowner.

Replacement trees planted under a condition rather than because of an obligation under section 206 of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/206>) are not automatically protected by the original Order. So, the authority should consider varying the Order where, for example, replacement trees are of a different species to that referred to in the Order.

Paragraph: 097 Reference ID: 36-097-20140306

Revision date: 06 03 2014

How long does consent last for?

By default, consent is valid for 2 years (<http://www.legislation.gov.uk/uksi/2012/605/regulation/17/made>) beginning with the date of its grant. However, the authority may decide to set a different time limit with a condition in the consent. A tree owner may use an unused and unexpired consent obtained by a former owner. If any specified time limit expires, and the tree owner wishes to carry out a prohibited activity in respect of protected tree, a further application for consent has to be made.

Paragraph: 098 Reference ID: 36-098-20140306

Revision date: 06 03 2014

What information should be provided by an authority if it refuses consent or imposes conditions?

When an authority decides to refuse consent or grant consent subject to conditions its decision notice should clearly state what the decision is and the reasons for that decision. These should specifically address each of the applicant's reasons for making the application. In addition, the authority should:

- give its reasons for each condition imposed;
- explain the applicant's right of appeal to the Secretary of State against the decision and give the contact details of the Planning Inspectorate; and

- explain the applicant's right to compensation for loss or damage as a result of the authority's decision, and how a claim should be made.

Paragraph: 099 Reference ID: 36-099-20140306 Revision date: 06 03 2014

What about advice and information to accompany the decision?

The authority may wish to attach to its decision notice advice and information (sometimes known as an 'informative') relating to the decision. For example:

- how best to plant a replacement tree
- how to carry out work in accordance with good practice
- how to protect wildlife and biodiversity
- where to get independent specialist advice

Paragraph: 100 Reference ID: 36-100-20140306

Revision date: 06 03 2014

Appealing against local authority decisions on applications

Can people appeal against decisions on applications for consent under a Tree Preservation Order?

Following an application to a local planning authority for consent to cut down or carry out work on a tree subject to an Order, an applicant can appeal to the Secretary of State. The various grounds on which an appeal may be made are set out in Regulation 19

(<http://www.legislation.gov.uk/ukxi/2012/605/regulation/19/made>). These appeals are handled by the Planning Inspectorate on the Secretary of State's behalf.

If the local authority has not decided an application for consent within 8 weeks from the day it is received, then the applicant may appeal on grounds of non-determination.

The appellant may withdraw their appeal at any time.

The authority may issue a decision more than 8 weeks after it receives an application, but cannot decide the application once an appeal has been made and remains outstanding.

Paragraph: 101 Reference ID: 36-101-20140306

Revision date: 06 03 2014

How are appeals made?

Regulations 19-23 (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/19/made>) set out the appeal procedures. Applicants (or their agents) must make any appeal in writing by notice to the Planning Inspectorate. The Planning Inspectorate publishes the appeal form and detailed guidance

(<https://www.gov.uk/government/publications/tree-preservation-order-procedure-guide>) on the appeal process.

Paragraph: 102 Reference ID: 36-102-20140306

Revision date: 06 03 2014

How are appeals decided?

The Planning Inspectorate deals with most appeals through a written representations appeal procedure. An Inspector makes a decision in light of the grounds of appeal and:

- the information available when the local planning authority made its original decision on the application for consent
- the authority's decision and supporting information in that decision
- any further information requested by the Inspector.

Alternatively, the appeal may be heard by an Inspector at a hearing or public local inquiry.

Whichever appeal procedure is used, the Inspector will consider:

- the amenity value of the tree or trees in question
- how that amenity value would be affected by the proposed work
- the reasons given for the application.

Paragraph: 103 Reference ID: 36-103-20140306

Revision date: 06 03 2014

What about appeal costs?

The local planning authority and the appellant normally meet their own expenses. However, both the authority and the appellant can apply for some or all of their appeal costs. In certain circumstances, third parties may be able to apply for costs. Whichever appeal procedure is used, an application can be made for an award of costs on the grounds of another party's unreasonable behaviour which causes unnecessary expense. Additionally, the Inspector may make an award of costs, in full or in part, if they judge that a party has behaved unreasonably resulting in unnecessary expense and another party has not made an application for costs. There are strict deadlines within which costs applications must be made (<https://www.gov.uk/guidance/appeals>).

Paragraph: 104 Reference ID: 36-104-20140306

Revision date: 06 03 2014

Must local planning authorities register appeals?

Regulation 12 (<http://www.legislation.gov.uk/uksi/2012/605/regulation/12/made>) requires authorities to keep a register of all appeals under Orders they have made.

Paragraph: 105 Reference ID: 36-105-20140306

Revision date: 06 03 2014

Can the appeal decision be challenged?

The validity of the Secretary of State's appeal decision can only be challenged through an application to the High Court. Further details are available in the Planning Inspectorate's appeals guidance (<https://www.gov.uk/appeal-decision-about-tree-order>).

Paragraph: 106 Reference ID: 36-106-20140306

Revision date: 06 03 2014

Compensating for loss or damage

What is the decision-making process regarding compensation?

Flowchart 4 shows the decision-making process regarding compensation.

Paragraph: 107 Reference ID: 36-107-20140306

Revision date: 06 03 2014

In what circumstances may a local planning authority be liable to pay compensation?

An authority is only liable to pay compensation in certain circumstances and there are strict criteria and limitations. Subject to provisions relating to forestry operations in protected woodland, an authority may be liable to pay compensation for loss or damage

(<http://www.legislation.gov.uk/uksi/2012/605/regulation/24/made>) caused or incurred in consequence of it:

- refusing any consent under an Order;
- granting a consent subject to conditions; or
- refusing any consent, agreement or approval required under a condition

Paragraph: 108 Reference ID: 36-108-20140306

Revision date: 06 03 2014

What are the limits for making claims for compensation?

No claim can be made for loss or damage incurred before an application for consent to undertake work on a protected tree was made.

Legislation (<http://www.legislation.gov.uk/uksi/2012/605/regulation/24/made>) sets out circumstances in which a claim cannot be made. Subject to provisions relating to forestry operations in protected woodland, a claim for compensation must be for not less than £500 and made to the authority either:

- within 12 months of the date of the authority's decision; or
- within 12 months of the date of the Secretary of State's decision (if an appeal has been made).

Paragraph: 109 Reference ID: 20-109-20140306

Revision date: 06 03 2014

What limits the local authority's liability to pay compensation?

Legislation (<http://www.legislation.gov.uk/uksi/2012/605/regulation/24/made>) limits the authority's liability by setting out circumstances in which a claim cannot be made and circumstances in which compensation is not payable.

Subject to specific provisions relating to forestry operations in protected woodland, any claimant who can establish that they have suffered loss or damage as a result of an authority either refusing consent or imposing conditions in respect of protected trees is entitled to claim compensation. However the authority's liability is limited. In such cases, compensation is not payable for any:

- loss or damage which was:
 - reasonably foreseeable by that person; and
 - attributable to that person's failure to take reasonable steps to avert the loss or damage or mitigate its extent;
- loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- loss of development value or other diminution in the value of land; and/or
- costs incurred in making an appeal to the Secretary of State against the refusal of any consent or the grant of consent subject to conditions.

Paragraph: 110 Reference ID: 36-110-20140306

Revision date: 06 03 2014

What are the special considerations relating to compensation and forestry operations in protected woodland?

If an authority refuses consent for felling in protected woodland in the course of forestry operations:

- it shall not be required to pay compensation other than to the owner of the land
- it shall not be required to pay compensation if more than 12 months have elapsed since the date of the authority's decision, or, in the case of an appeal to the Secretary of State, the final determination of that appeal
- the amount payable is limited to any depreciation in the value of the trees attributable to deterioration in the quality of the timber in consequence of the authority's decision.

Advice may be sought from the Forestry Commission (<http://www.forestry.gov.uk/england>) about the relevant provisions of the Forestry Act 1967 (<http://www.legislation.gov.uk/ukpga/1967/10/section/11>).

The authority is liable to pay compensation for any loss or damage caused or incurred as a result of complying with a condition where:

- the authority has granted consent for felling in the course of forestry operations all or part of a woodland area to which an order applies;
- the authority imposes a replanting condition;
- the Forestry Commission decides not to make any grant or loan under section 1 of the Forestry Act 1979 (<http://www.legislation.gov.uk/ukpga/1979/21/section/1>) in respect of the required replanting for the reason that the condition frustrates the use of the woodland area for the growing of timber or other forest products for commercial purposes and in accordance with the rules or practice of good forestry.

Paragraph: 111 Reference ID: 36-111-20140306

Revision date: 06 03 2014

What should the local authority consider when deciding a claim for compensation?

If a claim is made to the authority it should consider whether any loss or damage has arisen as a consequence of the decision. It should consider whether that loss or damage has arisen within the 12 months following its decision or, in the case of an appeal to the Secretary of State, the final determination of that appeal. The authority is advised to bear in mind the limitations to its liability to pay compensation covered in the answers to the previous questions. It should have regard to the reasons given for the work applied for and any reports or other supporting documents duly submitted.

Paragraph: 112 Reference ID: 36-112-20140306

Revision date: 06 03 2014

What if there is a dispute about a claim for compensation?

Authorities and claimants are encouraged to try to reach an agreement. Any question of disputed compensation must (<http://www.legislation.gov.uk/uksi/2012/605/regulation/24/made>) be referred to, and determined by, the Lands Chamber of the Upper Tribunal (<https://www.gov.uk/appeal-upper-tribunal-lands>).

Paragraph: 113 Reference ID: 36-113-20140306

Revision date: 06 03 2014

Protecting trees in conservation areas

What is the decision-making process for tree protection in conservation areas?

Flowchart 5 shows the decision-making process regarding notices for work to trees in a conservation area (<https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment#what-is-a-conservation-area>).

Paragraph: 114 Reference ID: 36-114-20140306

Revision date: 06 03 2014

What about trees in a conservation area that are already protected by a Tree Preservation Order?

Trees in a conservation area (<https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment#what-is-a-conservation-area>) that are already protected by a Tree Preservation Order are subject to the normal procedures and controls for any tree covered by such an Order.

Paragraph: 115 Reference ID: 36-115-20140306

Revision date: 06 03 2014

What about trees in a conservation area that are not protected by a Tree Preservation Order?

Trees in a conservation area (<https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment#what-is-a-conservation-area>) that are not protected by an Order are protected by the provisions in section 211 of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/211>). These provisions require people to notify the local planning authority, using a 'section 211 notice', 6 weeks before carrying out certain work on such trees, unless an exception applies. The work may go ahead before the end of the 6 week period if the local planning authority gives consent. This notice period gives the authority an opportunity to consider whether to make an Order on the tree.

Paragraph: 116 Reference ID: 36-116-20140306

Revision date: 06 03 2014

What about trees on Crown land within a conservation area that are not protected by a Tree Preservation Order?

The Crown must (<http://www.legislation.gov.uk/ukpga/1990/8/section/211>) give 6 weeks' notice for works to trees in a conservation area (<https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment#what-is-a-conservation-area>), unless an exception applies or the local planning authority has given consent.

Where work is carried out on a regular basis, the local authority and the appropriate authority of the Crown (<http://www.legislation.gov.uk/ukpga/2004/5/schedule/3>) should consider following the guidance at paragraph 126.

Paragraph: 117 Reference ID: 36-117-20140306

Revision date: 06 03 2014

How should the local authority deal with a section 211 notice?

The authority can deal with a section 211 notice in one of three ways. It may:

- make a Tree Preservation Order if justified in the interests of amenity, preferably within 6 weeks of the date of the notice;
- decide not to make an Order and inform the person who gave notice that the work can go ahead; or
- decide not to make an Order and allow the 6-week notice period to end, after which the proposed work may be done within 2 years of the date of the notice.

While bearing in mind the 6-week notice period, the authority should allow sufficient time for it to receive objections to the work. The authority should consider duly submitted objections when deciding whether the proposals are inappropriate and whether an Order should be made.

A section 211 notice is not, and should not be treated as, an application for consent under an Order. So the authority cannot:

- refuse consent; or
- grant consent subject to conditions.

Paragraph: 118 Reference ID: 36-118-20140306

Revision date: 06 03 2014

How does the local authority decide whether a tree in a conservation area merits a Tree Preservation Order?

The authority's main consideration should be the amenity value of the tree. In addition, authorities must (<http://www.legislation.gov.uk/ukpga/1990/9/section/72>) pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

Even if the tree's amenity value may merit an Order the authority can still decide that it would not be expedient to make one.

If an Order is made, in addition to fulfilling the usual statutory requirements, the authority should also provide a copy of the new Order to any agent who submitted the section 211 notice. It should also explain to the person who gave notice that an application for consent under the Order may be made at any time.

Paragraph: 119 Reference ID: 36-119-20140306

Revision date: 06 03 2014

What if work is done to trees in a conservation area, that are not protected by a Tree Preservation Order, without a section 211 notice being submitted?

Anyone who cuts down, uproots, tops, lops, wilfully destroys or wilfully damages a tree in a conservation area (<https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment#what-is-a-conservation-area>) (if that tree is not already protected by an Order), or causes or permits such work, without giving a section 211 notice (or otherwise contravenes section 211 of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/211>)) is guilty of an offence, unless an exception applies. The same penalties as those for contravening an Order apply.

Paragraph: 120 Reference ID: 36-120-20140306

Revision date: 06 03 2014

When must replacement trees be planted?

If a tree in a conservation area (<https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment#what-is-a-conservation-area>) is removed, uprooted or destroyed in contravention of section 211 of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/211>), the landowner has a duty (<http://www.legislation.gov.uk/ukpga/1990/8/section/213>) to plant another tree of an appropriate size and species at the same place as soon as he or she reasonably can. The same duty applies if a tree in a conservation area is removed because it is dead or presents an immediate risk of serious harm. The duty attaches to subsequent owners of the land.

Paragraph: 121 Reference ID: 36-121-20140306

Revision date: 06 03 2014

How does the local authority enforce the duty to plant a replacement tree?

The authority may enforce this duty (<http://www.legislation.gov.uk/ukpga/1990/8/section/207>) by serving a tree replacement notice. There is a right of appeal (<http://www.legislation.gov.uk/ukpga/1990/8/section/208>) against a tree replacement notice however the authority has powers to dispense (<http://www.legislation.gov.uk/ukpga/1990/8/section/213>) with the duty to plant a replacement tree. Any request for such a dispensation should be put to the authority in writing.

Paragraph: 122 Reference ID: 36-122-20140306

Revision date: 06 03 2014

Section 211 notices

What is a section 211 notice?

A section 211 notice is a notice submitted to the local planning authority by landowners or their agents. It notifies the authority of proposed work on trees in a conservation area that are not subject to a Tree Preservation Order. 'Protecting trees in conservation areas' gives guidance on the circumstances where a section 211 notice may be required.

Paragraph: 123 Reference ID: 36-123-20140306

Revision date: 06 03 2014

What form should a section 211 notice take?

A section 211 notice does not have to be in any particular form. It may be helpful to use the standard application form for work to trees protected by an Order (available from the Planning Portal (https://www.planningportal.co.uk/info/200126/applications/59/how_to_apply/5)) as a section 211 notice, but the authority cannot insist on this.

Paragraph: 124 Reference ID: 36-124-20140306

Revision date: 06 03 2014

What information should be in a section 211 notice?

A section 211 notice must describe the work proposed and include sufficient particulars to identify the tree or trees. Where a number of trees or operations are involved, it should make clear what work is proposed to which tree. A notice must include the date it is submitted. A plan is not mandatory but can be helpful.

Sufficient information in a section 211 notice will help the local authority to verify that the proposed work, if undertaken, has not been exceeded and support enforcement action if appropriate. People should not submit a section 211 notice until they are in a position to present clear proposals. They should consider first discussing their ideas with an arboriculturist or the authority's tree officer.

Paragraph: 125 Reference ID: 36-125-20140306

Revision date: 06 03 2014

What about section 211 notices for more than one operation?

Only one section 211 notice is needed to carry out a number of different operations on the same tree or to carry out work on a number of trees.

To avoid the need for repeated notices over a relatively short period of time, one notice may, where appropriate, be submitted for repeated operations, phased works or programmes of work.

Paragraph: 126 Reference ID: 36-126-20140306

Revision date: 06 03 2014

What should the local authority do with a vague or ambiguous section 211 notice?

The authority is advised to refer a section 211 notice containing insufficient or unclear information back to the person who submitted it. The authority may wish to provide information to help them resubmit an appropriate notice.

Paragraph: 127 Reference ID: 36-127-20140306

Revision date: 06 03 2014

Should the local authority acknowledge receipt of a section 211 notice?

A section 211 notice should be acknowledged, although the authority should first consider whether the proposed work is exempt from the requirement to give this notice or requires a felling licence (<http://www.forestry.gov.uk/forestry/inf-d6dfk86>). In either case it should promptly inform the person who gave the notice. Otherwise the authority should acknowledge receipt of the notice in writing.

Paragraph: 128 Reference ID: 36-128-20140306

Revision date: 06 03 2014

Does the local authority have to keep a register of section 211 notices?

The authority must (<http://www.legislation.gov.uk/ukpga/1990/8/section/214>) keep available for public inspection a register of all section 211 notices. Authorities are encouraged to make these registers available online. The register should include:

- the date of the section 211 notice;
- the name of the person who served it;
- the address of the land where the tree stands;
- the proposed work;
- sufficient information to identify the tree;
- the authority's decision (if any);
- the date of the authority's decision date (if any); and
- an index for tracing entries.

Paragraph: 129 Reference ID: 36-129-20140306

Revision date: 06 03 2014

Does the local authority have to publicise section 211 notices?

A section 211 notice does not need to be publicised. However the authority can consider publicising a section 211 notice in order to seek the views of local residents, groups or authorities, particularly where there is likely to be public interest.

Paragraph: 130 Reference ID: 36-130-20140306

Revision date: 06 03 2014

Exceptions relating to section 211 notices

Is a section 211 notice required for a tree of any size?

People are not required (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/15/made>) to submit a section 211 notice to the local planning authority for:

- the cutting down, topping or lopping or uprooting of a tree whose diameter does not exceed 75 millimetres; or
- the cutting down or uprooting of a tree, whose diameter does not exceed 100 millimetres, for the sole purpose of improving the growth of other trees (eg thinning as part of forestry operations).

In either case, the diameter of the tree is to be measured over the bark of the tree at 1.5 metres above ground level. These exemptions do not apply in circumstances where a tree has more than one stem at a point 1.5 metres above the natural ground level if any stem when measured over its bark at that point exceeds the relevant minimum.

Paragraph: 131 Reference ID: 36-131-20140306

Revision date: 06 03 2014

What other types of tree work do not require a section 211 notice?

A section 211 notice is not required where the cutting down, topping, lopping or uprooting of a tree is permissible under an exception to the requirement to apply for consent under a Tree Preservation Order. Nor is a section 211 notice required for:

- the cutting down, topping, lopping or uprooting of a tree by, or on behalf of, the authority;
- the cutting down, topping, lopping or uprooting of a tree by or on behalf of the Forestry Commission (<https://www.forestry.gov.uk/england>) on land in which it has an interest; or
- cutting down a tree in accordance with a felling licence (<http://www.forestry.gov.uk/forestry/inf-d6dfk86>) or a plan of woodland operations agreed by the Forestry Commission.

Paragraph: 132 Reference ID: 36-132-20140306

Revision date: 06 03 2014

Is a section 211 notice required for work to dead or dangerous trees in conservation areas?

Unless there is an immediate risk of serious harm, anyone proposing to carry out work on a tree in a conservation area (<https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment#what-is-a-conservation-area>) on the grounds that it is dead must (<http://www.legislation.gov.uk/ukxi/2012/605/regulation/14/made>) give the authority 5 days notice before carrying out the proposed work. Where such a tree requires urgent work to remove an immediate risk of serious harm, written notice is required as soon as practicable after the work becomes necessary.

Paragraph: 133 Reference ID: 36-133-20140306

Revision date: 06 03 2014

Is a section 211 notice needed where a planning application includes tree work in a conservation area?

An authority may treat a planning application for development in a conservation area (<https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment#what-is-a-conservation-area>) that includes specified tree work as a section 211 notice if the applicant has clearly stated that it should be considered as such. However, if work is proposed to trees other than those immediately affected by a proposed development then a separate section 211 notice should be submitted. Where an authority has granted planning permission for development in a conservation area, only tree works necessary to implement the development may be carried out. The authority may use conditions or informatives attached to the permission to clarify this requirement.

Paragraph: 134 Reference ID: 36-134-20140306

Revision date: 06 03 2014

Enforcing tree protection offences

How are offences against a Tree Preservation Order enforced?

Anyone who contravenes an Order by damaging or carrying out work on a tree protected by an Order without getting permission from the local planning authority is guilty of an offence and may be fined.

There is also a duty requiring landowners to replace a tree removed, uprooted or destroyed in contravention of an Order. This duty also applies if a tree outside woodland is removed because it is dead or presents an immediate risk of serious harm. The local planning authority may also impose a condition requiring replacement planting when granting consent under an Order for the removal of trees. The authority can enforce tree replacement by serving a 'tree replacement notice'.

More information about tree replacement can be found at paragraph 151.

More information about investigations, injunctions and temporary stop notices can be found at paragraph 148.

Paragraph: 135 Reference ID: 36-135-20140306

Revision date: 06 03 2014

What is the decision-making process regarding offences?

Flowchart 6 shows the decision-making process regarding offences. This process applies to contraventions of Tree Preservation Orders. Unless stated, it also applies to work to trees in conservation areas that contravenes section 211 of the Town and Country Planning Act 1990

(<http://www.legislation.gov.uk/ukpga/1990/8/section/211>).

Local planning authorities should consider publishing tree protection enforcement policies and having clear written procedures to deal with cases. These procedures may require close liaison between tree officers, enforcement officers and legal advisers.

Paragraph: 136 Reference ID: 36-136-20140306

Revision date: 06 03 2014

What are the offences and who can be guilty of committing them?

Section 210(1) (<http://www.legislation.gov.uk/ukpga/1990/8/section/210>) and section 202C(2) of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/202C>) provide that anyone who, in contravention of a Tree Preservation Order

- cuts down, uproots or wilfully destroys a tree; or
- tops, lops or wilfully damages a tree in a way that is likely to destroy it; or
- causes or permits such activities

is guilty of an offence.

Section 210(4) of the Act (<http://www.legislation.gov.uk/ukpga/1990/8/section/210>) sets out that it is also an offence for anyone to contravene the provisions of an Order other than those mentioned above. For example, anyone who lops a tree in contravention of an Order, but in a way that the tree is not likely to be destroyed, would be guilty of this offence.

For the purposes of the Act, a person does not have to obliterate a tree in order to 'destroy' it. It is sufficient for the tree to be rendered useless as an amenity or as something worth preserving.

Paragraph: 137 Reference ID: 36-137-20140306

Revision date: 06 03 2014

What are the penalties for committing these offences?

Section 210(2) of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/210>) provides that anyone found guilty of these offences is liable, if convicted in the magistrates' court, to a fine of up to £20,000. In serious cases a person may be committed for trial in the Crown Court and, if convicted, is liable to an unlimited fine. Section 210(3) (<http://www.legislation.gov.uk/ukpga/1990/8/section/210>) provides that, in determining the amount of fine, the court shall take into account any financial benefit which has resulted, or is likely to result, from the offence.

There is also a duty requiring landowners to replace a tree removed, uprooted or destroyed in contravention of an Order.

Anyone found guilty in the magistrates' court of an offence under section 210(4) (<http://www.legislation.gov.uk/ukpga/1990/8/section/210>) is liable to a fine of up to Level 4 (currently £2,500).

Paragraph: 138 Reference ID: 36-138-20140306

Revision date: 06 03 2014

Are there time limits for bringing a prosecution?

Section 210(4A) and (4B) of the Town and Country Planning Act 1990

(<http://www.legislation.gov.uk/ukpga/2011/20/section/126>) set out that, in respect of offences under section 210(4) of the Act, authorities may bring an action within 6 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge. However, proceedings cannot commence more than 3 years after the date the offence was committed.

Paragraph: 139 Reference ID: 36-139-20140306

Revision date: 06 03 2014

What if unauthorised work has been attempted?

Section 210 of the Town and Country Planning Act 1990 provides a clear structure for pursuing criminal enforcement action for unauthorised work. But, where an alleged action falls short of the definition in section 210 of the Town and Country Planning Act 1990, section 1(1) of the Criminal Attempts Act 1981 (<http://www.legislation.gov.uk/ukpga/1981/47>) may provide an alternative route in some cases where unauthorised work has been attempted.

Paragraph: 140 Reference ID: 36-140-20140306

Revision date: 06 03 2014

What options for action do local planning authorities have?

When faced with what they believe are unauthorised works to protected trees, local authorities may:

- do nothing – but only if justified by the particular circumstances;
- negotiate with the owner to remedy the works to the satisfaction of the authority;
- consider the option of issuing an informal warning to impress on the tree owner or others suspected of unauthorised works that such work may lead to prosecution;
- seek an injunction to stop on-going works and prevent anticipated breaches; or
- consider whether the tests for commencing a prosecution are met.

Paragraph: 141 Reference ID: 36-141-20140306

Revision date: 06 03 2014

What should local authorities consider when deciding on the best option for action?

Negotiation may enable the authority to ensure that remedial works to repair, or reduce the impact of, unauthorised works to a protected tree are carried out. The authority should also take into account the legal duty to replace trees. Prosecutions cannot require remedial works to the tree but will, where appropriate, both punish offenders and deter potential offenders. The authority should consider whether there is a realistic prospect of a conviction and whether it is in the public interest to prosecute. It should also consider whether it is in the public interest to prosecute some or all of the individuals implicated in the offence.

Paragraph: 142 Reference ID: 36-142-20140306

Revision date: 06 03 2014

How can local planning authorities bring successful prosecutions?

To bring a successful prosecution the authority should have sufficient evidence to show that:

- the tree was protected by an Order at the relevant time, or was in a conservation area;
- an action which is an offence under section 210 of the Town and Country Planning Act 1990 has been carried out; and
- the defendant has carried out, caused or permitted this work.

The elements of the offence must be proved beyond reasonable doubt. It may be possible to bring a separate action for each tree cut down or damaged. Further guidance can be found at paragraph 148.

The burden of proof to show, on the balance of probabilities, that work fell within the terms of a statutory exemption is placed on the defendant.

In general, it is no defence for the defendant to claim ignorance of the existence of an Order. Nevertheless, the authority should ensure that a valid Order exists, that the tree in question was clearly protected by it and that it has carried out its statutory functions properly and complied with all procedural requirements.

Paragraph: 143 Reference ID: 36-143-20140306

Revision date: 06 03 2014

What about third parties?

It is an offence to cause or permit prohibited tree work. Furthermore, under section 44 of the Magistrates' Courts Act 1980 (<http://www.legislation.gov.uk/ukpga/1980/43/section/44>) any person who 'aids, abets, counsels or procures the commission by another person of a summary offence shall be guilty of the like offence'. So anyone who engages a person or company that physically carries out unauthorised work may also be subject to enforcement action.

Paragraph: 144 Reference ID: 36-144-20140306

Revision date: 06 03 2014

What if an offence is committed by a company?

Where a company contravenes an Order, section 331 of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/331>) provides that a director, manager or secretary or other similar officer of the company is guilty of the offence if it can be proved it was committed with their consent or connivance, or was attributable to any neglect on their part.

Paragraph: 145 Reference ID: 36-145-20140306

Revision date: 06 03 2014

Does the local authority have rights of entry where it suspects an offence?

Sections 214B (<http://www.legislation.gov.uk/ukpga/1990/8/section/214B>), 214C (<http://www.legislation.gov.uk/ukpga/1990/8/section/214C>) and 214D of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/214D>) set out provisions relating to rights of entry in respect of protected trees. Authorities may authorise in writing their officers to enter land at a reasonable hour to ascertain whether an offence under section 210 or 211 has been committed if there are reasonable grounds for entering for this purpose. The authority must notify the occupier at least 24 hours' before entering a dwelling or occupied land. To enter Crown land the authority must first get consent from the relevant Crown body (<http://www.legislation.gov.uk/ukpga/1990/8/section/293>), which may impose conditions (<https://www.gov.uk/guidance/crown-development>). In urgent cases or where admission has been, or is reasonably expected to be, refused, a magistrate can issue a warrant enabling a duly authorised officer to enter land.

Anyone who wilfully obstructs an authority officer exercising these rights of entry is guilty of an offence and liable, if convicted in the Magistrates' Court, to a Level 3 fine (currently up to £1,000). See section 214D(3) of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/214D>).

Paragraph: 146 Reference ID: 36-146-20140306

Revision date: 06 03 2014

Is it appropriate to publicise successful prosecutions?

Authorities should consider publicising successful prosecutions to help maximise their deterrent value.

Paragraph: 147 Reference ID: 36-147-20140306

Revision date: 06 03 2014

Investigations, injunctions and temporary stop notices

Procedures for criminal investigations by local planning authorities

The authority should first investigate whether or not an allegation that a contravention has taken place, or is about to take place, is true. The authority should consider keeping anyone who has notified the authority of a contravention informed of the outcome of the investigation.

Local authority officers conducting criminal investigations must have regard to the codes of practice (<https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>) prepared under section 66 of the Police and Criminal Evidence Act 1984 (<http://www.legislation.gov.uk/ukpga/1984/60/section/66>) and any other relevant codes relating to criminal proceedings. This duty applies when an authority discharges its enforcement powers, including rights of entry, gathering samples from trees or of soil and taking statements. The authority's lawyers should be able to advise officers on how they should apply the codes in practice.

Authorities should liaise with the Forestry Commission if they believe there has been a contravention of the felling licence (<http://www.forestry.gov.uk/forestry/infd-6dfk86>) provisions of the Forestry Act 1967.

Where Crown land is involved, the local planning authority must secure the consent of 'the appropriate authority' (<http://www.legislation.gov.uk/ukpga/1990/8/section/293>) before taking any step for the purposes of enforcement.

When considering whether to prosecute, the authority should have regard to the Code for Crown Prosecutors (<https://www.cps.gov.uk/publication/code-crown-prosecutors>) and its own enforcement and prosecution policies.

Prosecutors should ensure that evidence at trial is restricted only to establishing the elements of the offence. For example, knowledge of the existence of the Tree Preservation Order in question is not required. Also, in some cases, accidental destruction of a protected tree is not an offence.

Paragraph: 148 Reference ID: 36-148-20140306

Revision date: 06 03 2014

Enforcement – injunctions

An injunction is a court order prohibiting a person from taking a particular action. Section 214A of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/214A>) enables an authority to apply to the High Court or County Court for an injunction to restrain an actual or apprehended offence under section 210 (contravention of a Tree Preservation Order) or section 211 (prohibited work on trees in a conservation area).

Paragraph: 149 Reference ID: 36-149-20140306

Revision date: 06 03 2014

Enforcement – temporary stop notices

Where an authority considers there has been a breach of planning control and immediate action is required to stop an activity endangering the amenity of the area, Section 171E of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/171E>) enables the authority to issue a temporary stop notice. This notice can require either an activity to cease or the level of an activity to be reduced or minimised. Such notices may apply to breaches of conditions in planning permissions. Such notices may apply, for example, to breaches of planning conditions requiring physical tree protection. They do not apply to general activities that may be endangering protected trees.

Paragraph: 150 Reference ID: 36-150-20140306

Revision date: 06 03 2014

Replacing protected trees

What is the decision-making process regarding tree replacement?

Flowchart 7 shows the decision-making process regarding tree replacement. Unless stated, this process applies to trees subject to a Tree Preservation Order and to trees in a conservation area (<http://www.legislation.gov.uk/ukpga/1990/8/section/213>) that are not subject to an Order.

In addition to possible criminal penalties landowners have a duty, in certain circumstances, to replace trees or to replant in protected woodlands. Also, the local planning authority may impose a condition requiring replacement planting when granting consent under a Tree Preservation Order for the removal of trees.

Paragraph: 151 Reference ID: 36-151-20140306

Revision date: 06 03 2014

How can local planning authorities enforce the duties to replace protected trees and woodlands?

The authority can enforce tree replacement duties by serving a tree replacement notice.

Paragraph: 152 Reference ID: 36-152-20140306

Revision date: 06 03 2014

What are the considerations relating to the duty to replace trees protected by a Tree Preservation Order outside woodland?

Under section 206 of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/206>) landowners have a duty to replace a tree removed, uprooted or destroyed in contravention of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (<http://www.legislation.gov.uk/uksi/2012/605/contents/made>). This duty also applies under section 206 if a tree (except a tree protected as part of a woodland) is removed, uprooted or destroyed because it is dead or presents an immediate risk of serious harm.

The duty transfers to the new owner if the land changes hands.

Replacement trees should be of an appropriate size and species and planted at the same place as soon as the owner of the land can reasonably do this.

Unlike a replacement tree planted under a condition, a replacement tree planted because of the duty under section 206 is automatically protected by the original Order. The local planning authority has powers only to enforce the duty to plant one tree to replace one other. But the authority and landowner may agree on planting, for example, one tree of a different species or two trees of a smaller species to replace one of a large species. In these circumstances the authority is advised to vary the Order to bring it formally up to date.

It may not be necessary (or practical) for the replacement tree to be planted in the exact position of the original tree. But the place should at least correspond with the original position described in the Order and shown on the map. Where the Order includes the area classification, although the position of every tree will not be shown, the authority is advised to specify replanting as near as is reasonably practical to the original tree's position.

The duty on the owner of the land is to plant a replacement tree as soon as they reasonably can. However, the authority should carefully consider the circumstances of the case (such as the number of trees involved or the time of year) when deciding what timing would be reasonable.

Section 206(2) of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/206>) gives the authority power to dispense with the duty to plant a replacement tree where the landowner makes an application. Any request for the authority to use this power should be made in writing.

Paragraph: 153 Reference ID: 36-153-20140306

Revision date: 06 03 2014

What are the considerations relating to the duty to replace trees protected by a Tree Preservation Order in woodland?

Section 206(3) of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/206>) restricts the landowner's duty to replace trees subject to the woodland classification to those removed, uprooted or destroyed in contravention of the Order. The duty is to plant the same number of trees:

- on or near the land on which the trees stood, or on such other land as may be agreed between the local planning authority and the landowner, and
- in such places as may be designated by the authority

Where the duty arises under section 206, those trees planted within the woodland specified in the Order will be automatically protected by the original Order. The authority should consider varying the Order or making a new one to protect any replacement trees planted in a location not identified in the original

Order.

Paragraph: 154 Reference ID: 36-154-20140306

Revision date: 06 03 2014

When can local planning authorities serve a tree replacement notice?

Section 207 of the Town and Country Planning Act 1990

(<http://www.legislation.gov.uk/ukpga/1990/8/section/207>) gives local planning authorities the powers to enforce an unfulfilled duty under section 206 to replace trees or woodlands by serving on the landowner a 'tree replacement notice'. The authority may also serve a tree replacement notice to enforce any unfulfilled condition of consent granted under a Tree Preservation Order, or imposed by the Secretary of State on appeal, that requires tree replacement.

However, if the local planning authority believes, in the circumstances, that replacement trees should be planted, it should first try to persuade the landowner to comply with the duty voluntarily. The authority should discuss the issue with the landowner and offer relevant advice.

Paragraph: 155 Reference ID: 36-155-20140306

Revision date: 06 03 2014

What should the local planning authority consider when deciding whether to serve a tree replacement notice?

The local planning authority's power to enforce tree replacement is discretionary. Clearly it must be satisfied that the trees were protected at the time they were removed. The authority should also be satisfied that removed trees within an area classification were present when the Tree Preservation Order was made.

The local planning authority should also consider:

- the impact on amenity of the removal of trees, and whether it would be in the interests of amenity (and, in woodlands, in accordance with the practice of good forestry) to require their replacement;
- whether it would be reasonable to serve a tree replacement notice in the circumstances of the case; and
- the possibility of a wider deterrent effect.

If the authority decides not to take formal enforcement action it should be prepared to explain its reasons to anyone who would like to see action taken.

In addition, the authority may have to decide an application by a landowner asking it to dispense with the tree replacement duty. The authority should give its decision in writing, setting out its reasons.

Paragraph: 156 Reference ID: 36-156-20140306

Revision date: 06 03 2014

What about serving a tree replacement notice relating to Crown land?

The local planning authority is not required to obtain the prior consent of ‘the appropriate authority (<http://www.legislation.gov.uk/ukpga/1990/8/section/293>)’ before serving a tree replacement notice on a Crown body. However, it is required to secure the consent (<http://www.legislation.gov.uk/ukpga/1990/8/section/325A>) of the appropriate authority before entering Crown land to enforce the notice.

Paragraph: 157 Reference ID: 36-157-20140306

Revision date: 06 03 2014

When and how should the local planning authority serve a tree replacement notice?

The local planning authority can only serve a tree replacement notice within 4 years from the date of the landowner’s failure to replant as soon as he or she reasonably could (see section 207(2) of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/207>)). The notice should be served on the landowner. It may be served electronically if the landowner has provided their electronic address to the authority (see section 329(1)(cc) of the Act (<http://www.legislation.gov.uk/ukpga/1990/8/section/329>)).

Paragraph: 158 Reference ID: 36-158-20140306

Revision date: 06 03 2014

What should be in a tree replacement notice?

A tree replacement notice should make clear whether it relates to non-compliance with a condition or to a duty under section 206 or 213 of the Town and Country Planning Act 1990. It should explain why the authority is exercising the duty and what the landowner must do to comply with it. It should state:

- what has given rise to the duty;
- whether the notice relates to contravening an Order or a section 211 notice;
- whether the notice relates to complying with a condition of consent;
- the number, size and species of the replacement trees
- where the trees are to be planted (including a plan showing their position);
- the period at the end of which the notice is to take effect (the period specified must be a period of not less than 28 days beginning with the date of service of the notice);
- a date by when the tree replacement notice should be complied with (the authority should consider what the landowner can reasonably do);
- that the landowner can appeal against the notice (further guidance can be found at paragraph 165 and paragraph 166).

Paragraph: 159 Reference ID: 36-159-20140306

Revision date: 06 03 2014

What else can be in a tree replacement notice?

The local planning authority should consider including in the notice:

- reference to the relevant Order or conservation area
- further information about the landowner's right of appeal against the notice
- an explanation of what will happen if the landowner fails to comply with the notice
- contact details of an authority officer who can deal with queries

Paragraph: 160 Reference ID: 36-160-20140306

Revision date: 06 03 2014

What can the local planning authority do if a tree replacement notice is not complied with?

Failure to comply with a tree replacement notice is not an offence. If a tree is not planted within the period specified in the notice the authority may extend the period for compliance with the notice. Section 209 of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/209>) gives authorities powers to take action where a replacement tree has not been planted within the compliance period or within such extended period as the authority may allow. The authority may go on to the land, plant the tree and recover from the landowner any reasonable expenses incurred. The authority should remind the landowner of the duty before the specified period ends and make clear that it will use its powers if the notice is not complied with.

Paragraph: 161 Reference ID: 36-161-20140306

Revision date: 06 03 2014

What happens if someone obstructs enforcement action?

Under section 209(6) of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/209>) anyone who wilfully obstructs a person acting in the exercise of the local planning authority's power to enter land and plant replacement trees is guilty of an offence. They are liable, if convicted in the Magistrates' Court, to a Level 3 fine (currently up to £1,000).

Paragraph: 162 Reference ID: 36-162-20140306

Revision date: 06 03 2014

Can the landowner recover costs if someone else has contravened the tree protection legislation?

Section 209(2) of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/209>) includes a provision enabling the landowner to recover from any other person responsible for the cutting down, destruction or removal of the original tree or

trees, as a civil debt, any:

- expenses incurred for the purposes of complying with a tree replacement notice; or
- sums paid to the authority for planting replacement trees themselves

Paragraph: 163 Reference ID: 36-163-20140306

Revision date: 06 03 2014

What other legislation may apply to enforcement action?

Regulation 14 of the Town and Country Planning General Regulations 1992

(<http://www.legislation.gov.uk/ukxi/1992/1492/regulation/14/made>) applies sections 276

(<http://www.legislation.gov.uk/ukpga/Geo5and1Edw8/26/49/section/276>) (power to sell materials removed during work), 289 (<http://www.legislation.gov.uk/ukpga/Geo5and1Edw8/26/49/section/289>) (power to require occupiers to allow work to be carried out by the owner) and 294

(<http://www.legislation.gov.uk/ukpga/Geo5and1Edw8/26/49/section/294>) (limit on liability of agents or trustees) of the Public Health Act 1936 to tree replacement notices.

Paragraph: 164 Reference ID: 36-164-20140306

Revision date: 06 03 2014

Is there a right of appeal against a tree replacement notice?

Section 208 of the Town and Country Planning Act 1990

(<http://www.legislation.gov.uk/ukpga/1990/8/section/208>), as amended, sets out provisions relating to appeals to the Secretary of State against tree replacement notices. Appeals must be made to the Planning Inspectorate, which handles appeals on behalf of the Secretary of State, before the notice takes effect. See the Planning Inspectorate's detailed guidance on making an appeal and the associated form (<https://www.gov.uk/government/publications/tree-replacement-notice-procedure-guide>).

Paragraph: 165 Reference ID: 36-165-20140306

Revision date: 06 03 2014

Can the appeal decision be challenged?

The appellant or the authority may appeal to the High Court against the Secretary of State's decision on an appeal against a tree replacement notice (see section 289(2) of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/289>)) on a point of law. Details on High Court challenges are in the Planning Inspectorate's guidance on tree replacement appeals (<https://www.gov.uk/appeal-decision-about-tree-order>).

Paragraph: 166 Reference ID: 36-166-20140306

Revision date: 06 03 2014

Annex A: Flowcharts

Flowchart 1: Making and confirming a Tree Preservation Order

Flowchart 1: Making and confirming a Tree Preservation Order

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777642/TPO_flowchart_1.pdf)

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Paragraph: 167 Reference ID: 36-167-20140306

Revision date: 06 03 2014

Flowchart 2: Varying or revoking a Tree Preservation Order

Flowchart 2: Varying or revoking a Tree Preservation Order

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Paragraph: 168 Reference ID: 36-168-20140306

Revision date: 06 03 2014

Flowchart 3: Applications to carry out work on trees protected by a Tree Preservation Order

Flowchart 3: Applications to carry out work on trees protected by a Tree Preservation Order

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777644/TPO_flowchart_3.pdf)

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Paragraph: 169 Reference ID: 36-169-20140306

Revision date: 06 03 2014

Flowchart 4: Compensation

Flowchart 4: Compensation

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Paragraph: 170 Reference ID: 36-170-20140306

Revision date: 06 03 2014

Flowchart 5: Notices for work to trees in a conservation area

Flowchart 5: Notices for work to trees in a conservation area

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Paragraph: 171 Reference ID: 36-171-20140306

Revision date: 06 03 2014

Flowchart 6: Offences

Flowchart 6: Offences

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Paragraph: 172 Reference ID: 36-172-20140306

Revision date: 06 03 2014

Flowchart 7: Tree replacement

Flowchart 7: Tree replacement

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Paragraph: 173 Reference ID: 36-173-20140306

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