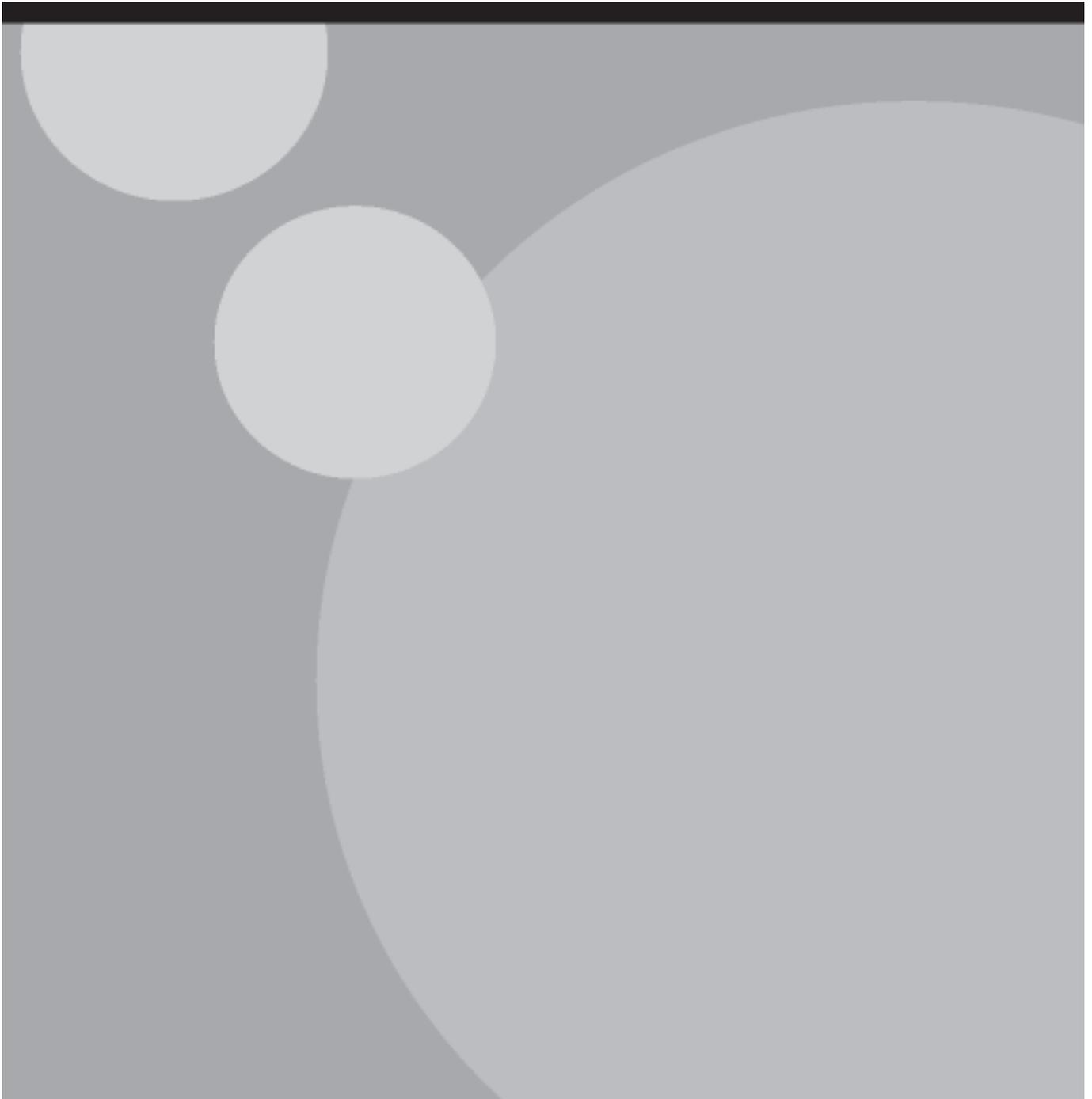




Main changes to the tree preservation order system in England from 6 April 2012





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Department for Communities and Local Government

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A consolidated and streamlined tree preservation order system

On 6 April 2012, the Town and Country Planning (Tree Preservation)(England) Regulations 2012 put all tree preservation orders ('orders') onto the same footing and consolidated existing legislation into one new set of regulations. These new regulations:

- cancel the provisions in every existing tree preservation order, except for the information necessary to give the orders legal effect and identify the trees protected, and replace them with provisions in the new regulations. These regulations introduce a new model order in a slimmed-down format. This also introduces a unified system, removing the inconsistencies that local planning authorities and the Planning Inspectorate have had to resolve. The aim is a simpler system for authorities to administer and easier for tree owners and others to use;
- consolidate existing legislation that deals with procedural matters for making and administering tree preservation orders in one new set of regulations. This has been achieved by using powers in section 192 of the Planning Act 2008 to replace (in so far as they relate to England):
 - The Town and Country Planning (Trees) Regulations 1999 (SI 1999, No.1892);
 - The Town and Country Planning (Trees)(Amendment)(England) Regulations 2008 (SI 2008, No.2260);
 - The Town and Country Planning (Trees)(Amendment No. 2)(England) Regulations 2008 (SI 2008, No.3202);
 - subsections 198(3), (4), (6), (8) and (9), and sections 199, 201, 203-205 of the Town and Country Planning Act 1990.

The duty imposed on authorities by section 197 of the Town and Country Planning Act 1990 to make tree preservation orders as they think necessary when granting planning permission remains unchanged. The more general power, in section 198 of that Act, to make tree preservation orders in the interests of amenity also remains unchanged.

The consolidation and streamlining does not change the level of protection provided to trees.

Immediate protection from a tree preservation order

Under the regulations that have been replaced, there were two ways for making a tree preservation order. In the first, the order only came into force once a local planning authority had considered all objections, made any amendments and confirmed the order. Alternatively, where it appeared there was a need for the order to come into force immediately, a local authority could include a direction to that effect and, in practice, most new tree preservation orders were made in this way. The direction provided provisional protection for a period of six months and the authority concerned would have needed to confirm the order to continue that protection. The new regulations adopt one system where all new orders provide immediate provisional protection that lasts for six months and long-term protection once authorities confirm them after considering any objections or representations.

Informing interested parties

Prior to August 1999, local planning authorities were required to send copies of tree preservation orders to the owners and occupiers of the land affected by a new or varied order. The 1999 Regulations added a requirement to send copies to the owners and occupiers of any adjoining land, even where they had no rights over the trees protected. This created extra work for planning authorities as, for example, they would have had to send multiple copies to all the occupiers of neighbouring blocks of flats even though they may have been located some distance from the trees in question. The regulations refocus the service of new orders on those who have a right to prune or fell the trees covered by the order. Authorities will still be able to notify others, but this is now discretionary.

Exemptions from the need for obtaining consent

Under the tree preservation order regulations that have been replaced, there were several circumstances where consent from the local planning authority was not required to carry out work to protected trees. This included trees that were dying, dead or had become dangerous. The broad scope of this exemption presented some uncertainty for those wanting to carry out what they believed to be exempt work. The new regulations omit “dying” from the exceptions. They also introduce an exemption for removing dead branches from a living tree.

Prior notification of intention to carry out exempted work

The new regulations include a requirement for a tree owner to give at least five working days written notice of proposed work on dead trees, unless there is an urgent risk to safety. This requirement was present in pre-1999 Orders and has been recommended as good practice.

Consents

Tree preservation orders made before August 1999 contained a power for local planning authorities to modify or revoke consent they had granted for specific work. The 1999 Regulations did not continue this power in relation to orders made on or after that date, thereby complicating the system. The new regulations have revoked the power in relation to all such orders, thereby simplifying the system by removing a power that was in any case rarely used.

Default period for duration of consents

The new regulations set a two year default period for the duration of consents for work on protected trees, with a power for the local planning authority to vary this if appropriate.

Planting replacement trees

Under the regulations that have been replaced, when a local planning authority granted consent to remove a protected tree, they considered whether a condition requiring a new tree to be planted was necessary. However, when replacement planting was required in woodland, the authority gave the landowner a direction (not a condition) to replant. The new regulations remove the need for directions by enabling conditions to be used in all cases where replanting is required.

Compensation claims to the local planning authority for loss or damage arising from refusal of consent or conditions

Before 6 April 2012 there were two compensation systems in operation:

- For all tree preservation orders made before 2 August 1999, local planning authorities were able to issue an 'article 5 certificate' which removed their liability to pay compensation under the order. These certificates were issued where the authority was satisfied that their decision was made in the interests of good forestry practice or that the trees or woodlands were of outstanding or special amenity value.
- The 1999 Regulations did not include this power, but introduced a revised and more clearly defined compensation framework for orders made on or after 2 August 1999.

The new regulations extend the approach in the 1999 Regulations to all tree preservation orders by removing the power to issue article 5 certificates. The same compensation framework therefore applies to all orders, irrespective of when made.