

Tree Preservation Orders

Guidance notes issued by The Office of the Deputy Prime Minister

This information is issued by The Office of the Deputy Prime Minister (ODPM) and is for guidance only. It is not a statement of the law. You should consult a solicitor if you are unsure of your legal rights or obligations.

1: What is a tree preservation order?

It is an order made by the Council which in general makes it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree without the planning authority's permission

2: What is the purpose of a tree preservation order?

To protect trees for the public's enjoyment. This is particularly important where trees are in immediate danger

3: What type of trees can be covered by an order?

All types, including hedgerow trees, but not hedges, bushes or shrubs. The order can cover anything from a single tree to woodlands.

4: How can I find out if a tree is covered by an order?

Details of confirmed and provisional orders are kept in the local land charges register. You can look at this at the Environment & Transportation Department, Development Control (Planning Department), located at Level 12 of the Civic Centre or by telephoning 0161-911 4105

An official search made before you purchase a property should reveal the existence of a tree preservation order (or whether your property is in a conservation area). Make sure your solicitor tells you if any trees are protected.

5: If I see work being carried out on a protected tree, how can I find out if the owner has permission?

Check with the planning department. It has a register of applications and decisions, which you can look at.

6: There are trees, which I think should be protected. What can I do?

Contact the planning department giving details of the trees, including a map if possible, and the reasons why you think the trees should be protected.

Before an order can be made for trees on Crown Land, the planning authority must seek permission from the relevant authority. Crown Land includes land belonging to government departments or land held for the Queen by a government department.

7: Does an order come into effect immediately?

The planning department can, if it chooses, make an order which will come into effect immediately and will continue for six months, or until it is confirmed, whichever comes first.

When the planning department confirms the order it can modify it, for example to exclude some of the trees.

8: How will I know when the planning department makes a tree preservation order?

We will write to the owner and other interested parties serving notice of the making of the order. We will also make a copy of the order available at the departmental reception (Level 12, Civic Centre) for public inspection.

9: How can I object to or express support for an order?

If you or anyone else wants to object to or support an order, write to the following address within 28 days of the service of the notice saying why and giving details of the relevant trees:

Development Control
Environment and Transportation Department
P.O. Box 30
West Street
Oldham
OL1 1UX

Telephone 0161-911 4105

We will take these comments into account when we decide whether to confirm the order. If appropriate, we may hold a public local enquiry.

10: Does the planning department then become responsible for looking after the trees?

No. The owner remains responsible for the trees, their condition and any damage they may cause. But he or she must get the planning department's permission to carry out work on them, unless they are dying, dead or dangerous (but see question 12)

The department may be able to offer appropriate help and advice.

11: What if I want to work on a protected tree?

An application pack, including the application form and guidance notes is available from reception or by calling 0161-911 4105. You will need to specify the trees, what you want to do and why.

You may find it helpful to consult a tree surgeon to clarify what you need to do. The Arboricultural Association has a list of approved tree surgery contractors, and the department can supply details of local Arboricultural Association approved contractors.

You can also write to the Arboricultural Association at

Arboricultural Association
Ampfield House
Ampfield
Romsey
Hants
SO5 9PA

Telephone 01794 368717

12: Do I always need the planning department's permission to work on a protected tree?

Yes, except for:

- ◇ cutting down any tree under a forestry dedication covenant or a plan of operations approved by the Forestry Commission, or where the Commission has granted a felling licence - see question 15
- ◇ cutting down or cutting back a tree
 - which is dying, dead, or dangerous, or

- where there is an obligation under an Act of Parliament, or
- at the request of certain government departments or other organisations specified in the order, or
- which is directly in the way of development that is about to start for which detailed planning permission has been granted, or
- which is a fruit tree cultivated for fruit production, or
- to prevent or control a nuisance in the legal sense (you may find it helpful to check first with a solicitor).

If you are in any doubt, check with the planning department.

13: If I don't need the planning department's permission, do I still have to inform it of any work I intend to carry out?

Except in an emergency you should give the planning department at least five days' notice before you cut down a protected tree which is dying, dead or dangerous. This is in your interests - you could be prosecuted if the authority thinks you have carried out unauthorised work. It could also decide that you do not have to plant a replacement tree. You must remember, however, that you will remain responsible for your trees and any damage they may cause.

14: When will I have to plant a replacement tree?

if you cut down or destroy a protected tree:

- in breach of an order, except in the case of woodland, because the tree is dying, dead or dangerous unless the planning authority says you need not, or
- if the planning authority gives you permission to cut down a protected tree but makes replanting a condition of its consent, or
- if you own protected woodland and the planning authority gives you permission to cut down trees, where this is for thinning, making way for approved development, or the replanting requirement has been waived by the Office of the Deputy Prime Minister.

Local planning authorities have legal powers to ensure that you plant a replacement tree when required. The original tree preservation order will normally cover the replacement trees.

15: Do I need a Forestry Commission felling licence to cut down trees covered by a tree preservation order?

Whether or not a tree preservation order is in force you must apply to the Forestry Commission for a felling licence if you want to cut down more than five cubic metres of timber - or sell more than two cubic metres of the exempt amount - in any calendar quarter. There are exceptions to this rule, which are set out in the Forestry Act 1967 and Regulations.

Where trees are covered by a tree preservation order and a felling licence application contains proposals for replanting the Forestry Commission will pass your application to the planning department, together with its comments, for decision under the order.

However if the purpose of the licence application is to discontinue the use of the land as woodland - or the intended use is not stated – the Forestry Commission will consider the application itself. Applicants should note that the Commission does not normally grant licences to change woodland to agricultural use. (Where, exceptionally, it does to propose to grant a licence to fell woodland protected by a tree preservation order it will first give

notice to the planning department. In such cases the planning department has the right to object to the proposal and if it does so the application will be referred for decision to the Secretary of State.

16: What happens if I carry out work on a protected tree without permission?

If you cut down, uproot or wilfully destroy a tree, or wilfully damage, top or lop a tree in a manner likely to destroy it, you could be fined up to £20,000 on summary conviction, or on indictment be liable to an unlimited fine. In determining the amount of the fine, the court would take account of the actual, or likely, financial benefit arising from the offence. For other offences you could be fined up to £2,500.

You will normally have to plant a replacement tree if the tree was cut down or destroyed.

17: What if my application to carry out work on a protected tree is refused, or I object to the conditions imposed by the planning department?

You can appeal to the Office of the Deputy Prime Minister in writing within 28 days of receiving the decision at the following address:

Government Office North West
Room 1117
Sunley Tower
Piccadilly Plaza
Manchester
M1 4BE

Telephone 0161-952 4231

The appeal will normally be decided on the basis of written representations. Both you and planning department have the right instead to a public local enquiry or hearing.

The Office of the Deputy Prime Minister may allow or dismiss the appeal, or vary the original decision.

18: Can I get any compensation if my application to carry out work on protected trees/woodland is refused or conditions are imposed?

If consent is refused - or granted with conditions - you can seek compensation from planning department for any loss or damage, which results. However you cannot make a claim where, under the terms of the order, the planning department has issued a certificate saying either:

- that the refusal or condition is in the interests of good forestry, or
- that the trees or woodland have an outstanding or special amenity value.

You can appeal to the Office of the Deputy Prime Minister against such a certificate.

Where a felling license application has been refused by the Forestry Commission (see question 15) you may get compensation from the Commission under the relevant forestry legislation.

Replanting of woodland:

You can also seek compensation from planning department where, on giving permission to cut down protected woodland, it has required replacement planting (see question 14). But such compensation is only available if the Forestry Commission will not give a grant for the replanting on the grounds that it would not be in accordance with good forestry practice.

19: How do I go about claiming compensation under a tree preservation order?

Write to planning department within 12 months of its decision, or that of the Office of the Deputy Prime Minister if you appealed.

20: Are there any extra restrictions in a conservation area?

Yes. The usual provisions apply to trees protected by tree preservation orders. For others you must give planning department six weeks' notice in writing if you want to carry out work on them. You must not carry out any work during that period without permission. If you do, you could be fined as described in question 16. You may also have to plant a replacement tree.

But you do not need permission if you want to cut down or work on trees less than 7.5 centimetres in diameter (measured 1.5 metres above the ground) or 10 centimetres if this is to help the growth of other trees.

The exceptions in question 12 also apply. If in doubt, check with planning department.

21: How are trees on development sites affected?

Trees on development sites can be protected by tree preservation orders or by conditions attached to the planning permission, or both. Planning conditions may also require you to plant trees, which may be covered by a tree preservation order. The order will take effect once they are planted.

22: Can I carry out work on protected trees which are in the way of proposed development?

You can only cut down or cut back protected trees if they are directly in the way of development, which is about to start, for which you have detailed planning permission. Check first with planning department. It may prosecute you if it thinks you have cut down or cut back excessively.

If the development does not require planning permission (for example, putting up a garden shed) you must apply to the planning department for permission under the tree preservation order in the normal way.

23: Can I stop planning permission being granted - or prevent approved development being carried out - by getting a tree preservation order imposed on trees on the site?

No. A tree preservation order will not prevent planning permission being granted. But the planning department will consider the risk to protected trees when deciding planning applications.

Once planning permission is granted, any felling may be carried out which is required to enable the development to go ahead.

Further information

You can find out more about tree preservation orders in the following:

Town and Country Planning Act 1990 (in particular sections 197-214 as amended)

The Planning and Compensation Act 1991 (section 23)

Forestry Act 1967 (as amended)

Statutory Instruments numbered SI 1969 No.17, SI 1975 No.148, SI 1979 Nos.791 and 792, SI 1981 No.14, SI 1985 Nos. 1572 and 1958, SI 1987 No.632 and SI 1988 Nos. 963 and 970.

These are all available through The Stationery Office.

You may also find it helpful to send off for a copy of the Forestry Commission's booklet *Tree Felling - Licences and Permissions*.
Write to them at:

Forestry Commission
231 Corstorphine Road
Edinburgh
EH12 7AT.