

PLANNING GUIDANCE (WALES)
TECHNICAL ADVICE NOTE (WALES) 10

TREE PRESERVATION ORDERS



Welsh Office



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This document is one of a series of Technical Advice Notes (Wales) (TANs) which supplement "Planning Guidance (Wales): Planning Policy".

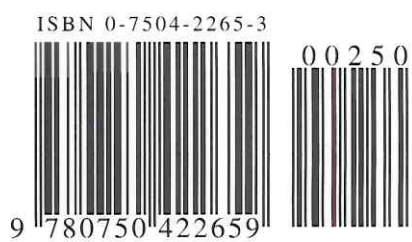
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Introduction

1. This Technical Advice Note (Wales) (TAN) should be read in conjunction with 'Planning Guidance (Wales): Planning Policy'. Planning Guidance, Technical Advice Notes and circulars should be taken into account by local planning authorities in the preparation of development plans. They may be material to decisions on individual planning applications and will be taken into account by the Secretary of State and his Inspectors in the determination of called-in planning applications and appeals.

2. Documents listed in the Reference column in the margin provide more detailed information which should be read in conjunction with the TAN.

(The advice in WO Circular 64/78 is still valid although the references to legislation are superseded by the 1990 Act and it does not take account of changes in the law since 1978).

3. Local planning authorities are empowered, in the interests of amenity, to protect trees and woodlands by making Tree Preservation Orders (TPOs). The Act places a duty on local planning authorities to make adequate provision where appropriate for the preservation and planting of trees when granting planning permission by imposing conditions and/or making TPOs.

4. A TPO must be in the form (or substantially in the form) of the Model Order. Guidance on the Model Order and on TPO procedures is to be found in the 1990 Act, subsidiary Regulations and Circular 64/78. A summary of the guidance is in the Annex to this TAN.

Scope of Tree Preservation Orders

Trees, Woodlands and Hedges

5. The principal effect of a TPO is to prohibit the cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of a tree or trees without the consent of the local planning authority. The terms 'tree' and 'woodland' are not defined in the Act, nor does it limit the application of TPOs to trees of a minimum size, but for the purposes of the Act the High Court has held that a "tree" is anything which ordinarily one would call a tree.

Reference

Town and Country Planning Act 1990, Part VIII (as amended by the Planning and Compensation Act 1991, Section 23)

Town and Country Planning (Tree Preservation Order) Regulations 1969. SI No 1969/17 (as amended by SI Nos 1975/148, 1981/14 and 1988/963)

Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975. SI No 1975/148

Welsh Office Circular 64/78, 'Trees and Forestry'

Town and Country Planning Act 1990, Section 198

Town and Country Planning Act 1990, Sections 199 and 201

Town and Country Planning (Tree Preservation Order) Regulations 1969. SI No 1969/17 (as amended)

6. A TPO which prohibits the carrying out of works to or felling of trees within a woodland area also, in the Secretary of State's view, protects trees which are planted or grow naturally in that area after the TPO is made.

7. A TPO cannot apply to bushes, shrubs or hedges. However, a TPO may be made to protect trees in hedges or an old hedge which has become a line of trees. Regulations on the protection of important hedgerows came into force in June 1997.

Crown Land

8. A TPO may be applied to protect trees on Crown land only with the consent of the appropriate authority. There is provision in the Act for making TPOs on Crown land in anticipation of the land being transferred to a private interest, though prior consent of the appropriate authority is still required. Such a TPO takes provisional effect as soon as the land ceases to be Crown land and so must be confirmed by the local planning authority.

9. A TPO on Crown land does not bind the Crown, but Government Departments will normally consult the local planning authority before carrying out work which would otherwise require consent.

Interest of the Forestry Authority Wales

10. There are limitations to the making of TPOs on land in which the Forestry Authority has an interest. If there is an existing forestry dedication covenant in force in respect of the land, or if the Forestry Authority has made a grant or loan in respect of the land, it must give its consent before a TPO can be made.

11. In implementing woodland schemes the Forestry Authority will have proper regard to environmental and amenity considerations but will always consult the local planning authority where protected trees are affected.

Local Authority Land

12. Local planning authorities may make TPOs to protect trees on land they own. Where they intend to carry out works on such trees they are required to apply to the Secretary of State for consent. However, where another party (e.g. a tenant) wishes to have works carried out on trees owned by the local authority, the authority may deal with the application.

Conservation Areas

13. Trees in conservation areas are subject to similar controls as trees to which a TPO applies. It is an offence to cut down, top, lop, uproot or wilfully damage or destroy such trees without giving notice to the local planning authority and receiving its consent, or after the expiry of a period of 6 weeks from the giving of notice (see Annex paragraphs A32-33). The purpose of the requirement to give the local planning authority 6 weeks' notice is to give the authority an opportunity to consider making a TPO in respect of the trees or woodlands concerned.

Considering the need for a TPO

14. A local planning authority may make a TPO if it is considered expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area. The Act does not define 'amenity'.

Reference

*Environment Act
1995, Section 97
Hedgerow
Regulations 1997.
SI No 1997/1160*

*Town and Country
Planning Act 1990,
Section 293 et seq*

*Town and Country
Planning Act 1990,
Section 200*

*Town and Country
Planning General
Regulations 1992,
Regulation 11.
SI No 1992/1492*

*Town and Country
Planning Act 1990,
Section 211 et seq*

*Town and Country
Planning (Tree
Preservation
Order)
(Amendment) and
(Trees in
Conservation Areas)
(Exempted Cases)
Regulations 1975.
SI No 1975/148*

*Welsh Office
Circular 64/78,
'Trees and Forestry'*

Reference

15. TPOs should be used to protect trees and woodlands whose removal would have a significant impact on the environment and its enjoyment by the public. Protected trees, or part of them, should normally be visible from a public place or from a reasonable number of neighbouring properties.

16. Although a tree may merit protection on amenity grounds it may not be expedient to protect it by means of a TPO, for instance when trees are under good arboricultural management or where there is little risk of them being felled or lopped etc. Conversely, it may be expedient to make a TPO if the local planning authority believes a tree that meets the criteria in paragraph 15 is at risk. Authorities should also review their TPOs regularly to identify those which can be varied or revoked.

Protected trees and development

17. Development plan policies should include, where appropriate, measures to protect trees and provide for tree planting and landscaping.

18. The effect of planning proposals on protected trees is a material planning consideration. Local planning authorities should discuss the implications of a proposal with the developer and may consider it expedient to make a TPO to protect trees on land before a planning application is made. It may be appropriate to require applicants seeking full planning permission to provide details of all existing trees on site, including their crown spread, and the location of those to be felled. Before granting outline planning permission, a local planning authority should consider the effect the permission would have on its ability to provide subsequently for the protection and planting of trees as a reserved matter.

19. The protection of trees during the course of development may alternatively be achieved by imposing conditions in respect of trees which are to be retained but which may be at risk during building work. It is for a local planning authority to decide how best to protect trees - through a planning condition or a TPO or both. However, it is not reasonable to use conditions to secure long term protection when TPOs can be used. A TPO may be used to protect and secure the replacement of trees which are to be planted to fulfil conditions.

*Town and Country
Planning Act 1990,
Section 197*

*Welsh Office
Circular 35/95,
"The Use of
Conditions in
Planning
Permissions"*

Planning Permission

20. A TPO does not require a person to obtain the consent of the local planning authority to cut down or carry out work on a tree which is 'immediately required for the purpose of carrying out development authorised by ... planning permission granted on an application made under Part III of the Act, or deemed to have been so granted'. If outline planning permission has been granted subject to a condition that the local planning authority's approval of reserved matters must be secured before development begins, work on trees cannot be said to be 'immediately' required for the purposes of the exemption and consent is needed for such works. Anyone proposing to build under permitted development rights has to obtain the local planning authority's consent to cut down or carry out any other work on a tree covered by a TPO.

*Town and Country
Planning (Tree
Preservation Order)
Regulations 1969,
Schedule 2
paragraph (3)(c).
SI No 1969/17*

Work which may be undertaken on protected trees

21. A TPO does not prevent anyone from cutting down or carrying out work on trees which are dead, dying or dangerous. This exemption is considered to allow the removal of dead wood from a tree or the removal of dangerous branches from an otherwise sound tree.

22. Whether a tree is dead, dying or dangerous is not always easy to establish. In relation to dangerous trees the Courts have held that the threatened danger might not have occurred and that if potential danger is far off, remote and not immediate, the exemption does not apply. The burden of proof as to the state of the tree lies with the person intending to cut down the tree or carry out the works.

23. Any person proposing to cut down a tree under the exemption is advised to give the local planning authority 5 days notice, except in an emergency. If a tree used as a roost for bats is to be cut down the Countryside Council for Wales must be consulted.

Statutory Obligations

24. A TPO does not prevent a person from cutting down or carrying out work on trees in compliance with any obligations imposed by an Act of Parliament.

Nuisance

25. A TPO does not prevent a person from cutting down or carrying out work on trees so far as may be necessary for the prevention or abatement of a nuisance. However, it is advisable to secure evidence of the nuisance caused and its extent, and the corresponding justification for the felling of, or carrying out of work on, the tree, before carrying out such work should the need for it be subsequently challenged. The burden of proof as to the nuisance caused lies with the person intending to fell or carry out works on the tree.

26. A landowner is normally permitted to cut branches from his/her neighbour's tree, if they overhang his/her property, to the boundary line between the two properties, the cut branches remaining the property of the neighbouring owner. The same rule applies to encroaching roots. But whether the encroaching branches or roots of a protected tree can be cut back in this way has not been the subject of a High Court decision and therefore the legality of such action is uncertain.

Forestry Authority Plans of Operations

27. A TPO does not prevent a person from cutting down trees on land which is subject to a forestry dedication covenant or a plan of operations approved by the Forestry Authority under one of its grant schemes, including the Woodland Grant Scheme.

Fruit Trees

28. The consent of the local planning authority is not required for cutting down or carrying out work on fruit trees which are 'cultivated for fruit production growing or standing ... in an orchard or garden'. This exemption is not considered to apply to ornamental varieties of these species or trees such as mulberry or walnut.

Other Exemptions

29. A TPO does not require the consent of the local planning authority for cutting down or carrying out work on a tree which:

- a. obstructs the approach or departure of aircraft from an aerodrome, or hinders the safe and efficient use of aviation or defence technical installations;
- b. is situated on a statutory undertaker's land and that: either the statutory undertaker cannot otherwise carry out works on that land; or, felling or lopping is for safety reasons;
- c. obstructs the construction, maintenance or working of an electric line.

30. In the context of paragraph 29b above the term "statutory undertaker" does not include the utilities (gas, electricity, telecommunications and water undertakings). The Model Order, however, includes separate exemptions in relation to telecommunications operators, who have their powers to lop trees in the 1984 Act and licence holders under

Reference

*Technical Advice
Note (Wales) 5
'Nature
Conservation and
Planning', 1996*

*Wildlife and
Countryside
Act 1981, Section 9*

*Town and Country
Planning Act 1990,
Section 200(3)*

*Town and Country
Planning (Tree
Preservation Order)
Regulations 1969,
Schedule 2,
paragraph (3)(d).
SI No 1969/17*

*Civil Aviation Act
1982*

*Town and Country
Planning Act 1990,
Section 262*

*Telecommunications
Act 1984*

Electricity Act 1989

the 1989 Act who may need to carry out work on trees which interfere with electricity lines.

31. Local planning authorities are not restricted from making TPOs in the vicinity of scheduled ancient monuments or churchyards but should consult Cadw: Welsh Historic Monuments in respect of the former before doing so.

Felling Licences

32. Consent for cutting down or carrying out works on a protected tree is not sought from the local planning authority where a felling licence is required. In such cases an application must be made to the Forestry Authority in the first instance. Section 9 of the 1967 Act and subsidiary Regulations sets out situations where a felling licence is not required. If the Forestry Authority proposes to grant a felling licence it will inform the local planning authority in writing. If the local planning authority objects the application must be referred to the Secretary of State who will deal with it under TPO legislation. The Forestry Authority also has the discretion to refer applications for a felling licence to the local planning authority to be dealt with under the TPO.

Reference

*Welsh Office
Circular 61/96,
'Historic Buildings
and Conservation
Areas'*

*Welsh Office
Circular 60/96,
'Archaeology and
Planning'*

Forestry Act 1967

*Forestry Act 1967,
Sections 9 and 15*

Annex A

MAKING AND CONFIRMING ORDERS

A1. Any person duly authorised in writing by the local planning authority may enter land for the purpose of surveying it in connection with making or confirming a TPO. The risk of felling may justify the immediate making of a TPO. Authorities are advised to explain to landowners why trees have been protected.

A2. A TPO must be in the form (or substantially in the form) of the Model Order. The Model Order is set out in the Town and Country Planning (Tree Preservation Order) Regulations 1969 (SI 1969/17). The trees or woodlands to be protected must be specified in the 1st Schedule of the TPO and a map showing the location of each tree should be included. In any discrepancy as to location, the map will prevail. The map should be of a scale which enables the trees or woodlands to be clearly identified. The Model Order provides that trees may be specified individually, or by reference to an area, or in groups, or as woodlands, or any combination of these categories.

A3. Authorities should record in a TPO the number and species of individual trees or groups to be protected (except in relation to woodlands where a general description should be sufficient), and their locations. Authorities may also record separately the present use of the land, the trees' importance as a wildlife habitat and why any trees are to be excluded from the TPO.

Individual Trees and Groups of Trees

A4. If trees merit protection in their own right they should normally be specified as individual trees in the TPO. The group category should be kept for trees whose overall impact and quality as a group merit protection.

Woodland and Areas of Trees

A5. The boundary of the woodland or area should be recorded and described accurately in a way which will avoid uncertainty if trees close to the boundary are removed. The area classification is an alternative way of specifying scattered individual trees. All trees within an area Order present at the time it is made, will be protected unless the Order specifically states otherwise. The area classification should be used exceptionally and only until the trees can be given individual or group classifications.

Section 201 Directions

A6. A Direction under section 201 of the 1990 Act enables a local planning authority to make a TPO which takes immediate effect. Until confirmed it is only provisional. If a TPO is not confirmed within 6 months of the date it was made the provisional protection ceases.

Completing the TPO

A7. A TPO should include a title; the name of the local planning authority; reference, if appropriate, to the Section 201 Direction at Article 13 of the TPO including the date on which the TPO takes provisional effect; a reference in the 1st Schedule, if appropriate, to any trees to be planted pursuant to a planning condition; and inclusion of all three schedules and a map.

PROCEDURE WHEN THE TPO IS MADE

A8. Regulation 5 of the 1969 Regulations requires the local planning authority to deposit the TPO and map for inspection at a place or places convenient to the locality; to serve a copy of the TPO, the map and an explanatory notice on owners and occupiers of the land affected; and to serve a copy of the TPO, the map and a list of the owners and occupiers affected, on the Conservator of Forests and the District Valuer.

A9. The Regulation 5 notice must say that objections to or representations about the TPO may be made. Local planning authorities may wish to include in or attach to the explanatory notice some general information about TPO procedures and the name of a contact in the authority. The TPO may be served by hand, or by leaving the documents or serving them by pre-paid registered letter or recorded delivery at the usual or last known abode of the owner/occupier. Section 329 of the 1990 Act makes provision for cases where the name of the owner/occupier cannot be ascertained.

Publicity

A10. Though it is not a requirement, the local planning authority should consider sending a copy of the TPO to local residents, authorities or groups or to display a site notice.

Making Objections or Representations

A11. An objection or representation must be made in writing to the local planning authority specifying the trees, groups of trees or woodlands about which it is made, and state the grounds on which it is made. It must be received within 28 days of the date of service of the explanatory notice.

Considering Objections or Representations

A12. Objections and representations must be taken into consideration by the local planning authority before deciding whether to confirm a TPO. Those which raise technical issues should be considered by an arboriculturist. Discussion between the local planning authority and an objector may lead to an objection being withdrawn.

Confirming the TPO

A13. A TPO may be confirmed without modification, or subject to such modifications as the authority consider expedient, or the TPO may not be confirmed. It is considered that the local planning authority's scope for modifying TPOs is limited to excluding some trees or woodlands from the confirmed TPO, or correcting errors in the made Order. Ideally, authorities should undertake an amenity assessment before making a TPO and certainly before confirming it and to record confirmation decisions.

A14. As soon as possible after reaching a decision on whether or not to confirm a TPO, a local planning authority must inform all the affected parties, the Conservator of Forests and District Valuer of its decision. If the TPO is confirmed subject to modifications the local planning authority must also send a copy of the modified TPO and map to those persons.

A15. Authorities should give their reasons for the decision, the date on which it was made and point out that there is a right to challenge it through the High Court within 6 weeks of the decision.

Challenging the TPO

A16. There is no right of appeal to the Secretary of State against a TPO. An application may be made to the High Court by an aggrieved person on the grounds that the TPO is not within the powers of the Act or that the requirements of the Act or the 1969 Regulations have not been complied with. The High Court may quash the TPO, or suspend its operation wholly or in part.

VARYING AND REVOKING TREE PRESERVATION ORDERS

A17. A local planning authority may order the revocation or variation of a TPO. The procedures for making and confirming a TPO should be followed when varying or revoking a TPO. An authority may wish to revoke a TPO and at the same time make a new one to replace it. Authorities should ensure that the date on which the new TPO takes effect coincides with the date on which the old TPO is revoked. Authorities should use their variation powers in particular in relation to area orders (see paragraph A5 above).

APPLYING FOR WORKS ON PROTECTED TREES

A18. Applications to fell or carry out work on a protected tree must be made in writing, stating the reasons why it is being made, and specifying the trees to which it relates and the precise operations for which consent is sought. A single application would be acceptable for various works on the same tree or on a number of trees or for a programme of work over a period of time. A local planning authority is required to keep a register of all applications for consent; it must be made available for inspection at all reasonable times.

A19. A site visit should be carried out to consider the work proposed and to enable a judgement to be formed about whether the works are justified in the context of the amenity value of the trees.

A20. Authorities should not issue a consent which substantially alters the work applied for but they can grant consent for less work than applied for. The legislation does not expressly restrict an authority's power as to the type of conditions they may impose when granting consent, but the conditions should relate to the authorised work, should be precise and should be enforceable. Commonly, they relate to the planting of replacement trees, a specified period for which the consent is valid and the standard of the authorised work (i.e. that it should be carried out by an arboriculturist or similarly qualified professional person).

Annex A

A21. Authorities are advised against imposing conditions which require details to be agreed with the applicants. Conditions which require the applicant to maintain a tree or put protective fencing around it are unlikely to be upheld by the Secretary of State.

A22. Authorities are liable to pay compensation to any person who suffers loss or damage in consequence of a refusal of consent or a grant of consent subject to conditions. However, where an authority refuses consent or grants consent subject to conditions it may issue a certificate under Article 5 of the Model Order, the effect of which is to remove the liability to pay compensation to any person who suffers loss or damage as a result of the decision. An Article 5 certificate may be issued if the authority is satisfied that its decision is in the interests of good forestry or that the trees have outstanding or special amenity value. Article 5 certificates should be used with discretion.

A23. Where consent is granted for the felling of trees in a woodland in the course of forestry operations Article 6 of the Model Order requires the local planning authority to give the landowner a direction to replant. This is not required where the consent is for silvicultural thinning; the consent is granted to enable the land to be developed in accordance with a full planning permission or when the authority, with the Secretary of State's approval, has dispensed with replanting.

A24. A direction under Article 6 must be in writing and must specify the manner and the period in which the land is to be replanted. Compensation is not payable under the terms of the Model Order for any loss or damage caused by complying with an Article 6 direction (except where Section 204(1) and (2) of the 1990 Act applies). (See also paragraph A44 below).

APPEALS AGAINST LOCAL PLANNING AUTHORITY DECISIONS

A25. An appeal to the Secretary of State may be made against an authority's decision to (1) refuse consent, (2) grant consent subject to conditions, (3) issue an Article 5 certificate on refusing consent or granting consent subject to the conditions, (4) issue an Article 6 direction on granting consent to fell any part of a woodland, or (5) against the authority's failure to give the applicant notice of its decision within two months from receipt of the application (though this period may be extended by mutual consent).

A26. An appeal must be made by the applicant in writing within 28 days of receiving an authority's decision, certificate or Direction, though the Secretary of State may allow a longer period. Authorities are advised to consider publicising appeals in the same way as they publicise applications.

A27. Parties to an appeal will be requested to submit their statements within a reasonable time. Authorities are not required to submit their appeal statement in any particular form but it might include a copy of the confirmed TPO, a location plan indicating the appeal trees, a copy of the application, a copy of the local planning authority officer's appraisal and recommendation, a copy of the decision, and copies of any third party representations.

A28. In appeals determined by written representations an officer of the Welsh Office, or an arboriculturist, will undertake a site visit and report to the Secretary of State to assist in determining the appeal. Representatives of both parties to the appeal will be invited to an accompanied site visit though unaccompanied visits can be arranged by agreement. No discussion of the merits of the appeal will be allowed at the site visit.

A29. Parties have the right to request to be heard by a person appointed by the Secretary of State. With such procedures, awards of costs for unreasonable behaviour may be made.

A30. The Secretary of State may allow or dismiss an appeal; reverse or vary any part of the decision; cancel any Article 5 certificate; cancel or vary any Article 6 direction. He may deal with the application as if it had been made to him in the first instance. The validity of the Secretary of State's decision on an appeal cannot be challenged except by way of application under the 1990 Act to the High Court.

MODIFYING AND REVOKING CONSENTS

A31. Unless a TPO consent states otherwise, it attaches to the land rather than the applicant. An authority can order the modification or revocation of a consent which it issued. The order can be brought into effect where all the parties affected by it notify the authority that they have no objections to it. Where there are objections, the order must be referred to the Secretary of State for confirmation. Local planning authorities may find the forms of advertisement and notice prescribed in Regulation 17 and Schedule 3 of the Town and Country Planning General Regulations 1992 useful, although they relate specifically to planning permission.

TREES IN CONSERVATION AREAS

A32. Anyone proposing to cut down or carry out work on a tree in a conservation area is required to give the local planning authority 6 weeks notice of the intention to do so. Exemptions to this requirement include works on trees which have a diameter of less than 7.5 cms or, if the work is to improve the growth of other trees, less than 10 cms when measured 1.5m above ground level.

A33. On receipt of such notice a local planning authority, (1) may allow the 6 weeks period to expire or, (2) inform the applicant that the work can go ahead, in which case the work must be undertaken within 2 years of the date of the notice, or, (3) make a TPO. Authorities are advised to consider seeking the views of local residents and community and conservation groups where there is likely to be public interest and must keep available for public inspection a register of all such notices.

OFFENCES

A34. Any person who, in contravention of a TPO, 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 is guilty of an offence as is any person who otherwise contravenes the provisions of a tree preservation order. To bring a successful prosecution an authority should have sufficient evidence to show that the tree was protected by a TPO, and the work was carried out without the authority's consent.

A35. Where a tree is not protected by a TPO but is situated within a conservation area it shall similarly be an offence, under Section 211 of the Act, to destroy, damage or otherwise carry out works on the tree without giving the appropriate notice to the local planning authority.

A36. A local planning authority may authorise, in writing, a person to enter land at a reasonable hour to ascertain whether an offence has been committed. Any person who wilfully obstructs a person exercising a right of entry is guilty of an offence.

TREE REPLACEMENT

A37. Landowners have a duty to replace any trees, other than those categorised as woodlands in the TPO, which are removed, uprooted or destroyed in contravention of the TPO.

A38. The duty of the landowner is to plant another tree at the same place as soon as possible. A replacement tree should be planted as near as is reasonably practicable to the position of the original tree and, if possible and appropriate, it should be of the same or similar species and display similar characteristics.

A39. Where woodlands are concerned the landowner should plant the same number of trees as are removed, uprooted or destroyed in contravention of the TPO, on or near where the trees stood, or on other land agreed by the local planning authority and the landowner or in such places as designated by the local planning authority. Replacement trees are automatically protected by the TPO which applied to the original tree.

Enforcement

A40. A local planning authority's power to take formal enforcement action is discretionary. In the first instance, it should attempt to persuade the landowner to comply with the duty voluntarily. If the authority consider it appropriate to issue a tree replacement notice under Section 207 of the 1990 Act, the notice must require the landowner to plant a tree or trees, specify the size and species of the tree(s) to be planted, their location, the period within which they should be planted, and the date on which the notice is to take effect.

A41. A tree replacement notice may also be served to enforce (i) the replacement of trees in a conservation area and (ii) a condition of consent requiring the replacement of trees. However, there is no express provision stating that trees replaced in accordance with a condition are automatically protected by the original TPO.

APPEALS AGAINST TREE REPLACEMENT NOTICES

A42. A person served with a tree replacement notice may appeal to the Secretary of State. Where an appeal is made, the tree replacement notice does not take effect until the appeal is determined or withdrawn. The Secretary of State has no discretion to determine appeals made after the date that the notice comes into effect being not less than 28 days after service of the notice. The Act does not preclude the landowner from challenging the validity of a tree replacement notice in the High Court.

Annex A

A43. Enforcement appeals are generally handled in the same way as appeals against authorities' decisions on applications for consent. The Secretary of State may correct any defect, error or misdescription in the notice or vary any of its requirements. This power does not extend to the correction of a notice so fundamentally flawed that it must be quashed. Costs may be awarded in cases dealt with by written representations or by hearing or local inquiry.

A44. The appellant or the local planning authority may appeal to the High Court against the Secretary of State's decision but the power of the Court is limited to referring the matter back to the Secretary of State who, in the light of the Court's judgement, will re-examine his decision.

INJUNCTIONS

A45. An authority may apply to the High Court or County Court for an injunction to restrain an actual or apprehended TPO offence. Authorities may apply for an injunction whether or not they have used, or propose to use, their other enforcement powers in the Act. The Court may require an authority to pay damages if the application for an injunction fails.

A46. A Court is unlikely to grant an injunction against a named person unless the local planning authority appear to have taken into account the relevant considerations in deciding that it is necessary or expedient to apply for an injunction, have clear evidence that an offence has already occurred or is likely to occur, and that injunctive relief is an appropriate remedy in the circumstances of the case.

COMPENSATION

A47. A TPO may make provision for the payment of compensation by an authority in respect of loss or damage resulting from the refusal of consent or the grant of consent subject to conditions. The Model Order makes such provision in Article 9. Any person who suffers loss or damage is entitled to claim compensation unless a certificate has been issued under Article 5 of the Model Order, the effect of which is described in paragraph A22 above. Disputed compensation claims will be determined by the Lands Tribunal.

A48. Where a local planning authority gives a direction under Article 6 of the Model Order requiring the replanting of woodland which is felled under a TPO, and the Forestry Authority decide not to make any grant or loan in respect of the replanting, the authority is liable to pay compensation in respect of any loss or damage caused or incurred as a result of complying with the direction.