



Guide to Tree Preservation Orders

Contents

- 1. Introduction 1
- 2. What is a TPO?..... 2
- 3. Effects of a TPO..... 2
- 4. How to request a new TPO 3
- 5. Procedure for creating a TPO 3
- 6. How to find out if a tree is protected by a TPO 5
- 7. Consequences if a tree protected by a TPO is damaged..... 6
- References 7

1. Introduction

The Environmental Rights Centre for Scotland (ERCS) aims to increase people’s awareness of their environmental rights and to ensure that people can effectively exercise them.

This is a brief guide to the law on tree preservation orders (‘TPOs’) in Scotland. It is intended to help understand what a TPO is, what the effects of TPOs are, how to request a TPO and the consequences of breaching a TPO.



This is not a comprehensive legal guide. ERCS provides free advice to individuals, community groups and organisations on environmental and related planning law – please [contact us through our website if you have a TPO-related query](#).

2. What is a TPO?

A TPO is a written ‘order’ (a type of legal document) which is made by a **local authority** to protect a specific tree or a group of trees from being damaged.

There are two pieces of law which govern TPOs in Scotland: [The Town and Country Planning \(Scotland\) Act 1997](#) (‘the 1997 Act’) and the [Town and Country Planning \(Tree Preservation Order and Trees in Conservation Areas\) \(Scotland\) Regulations 2010](#) (‘the 2010 Regulations’).

The Scottish Government has also published guidance on TPOs in [‘Planning Circular 1/2011: Tree Preservation Orders’](#).

3. Effects of a TPO

A TPO prohibits certain actions such as cutting down, topping, looping, wilful damage or wilful destruction of trees (unless those actions are done with the consent of the planning authority).

There are exceptions to those prohibited actions which include:

- Any exemptions mentioned within the TPO.¹
- The uprooting, felling or lopping of trees where doing so is:
 - urgently necessary in the interests of safety,
 - necessary for the prevention or abatement of a nuisance,



- authorised by an order granting development consent, or
- in compliance with any obligation imposed in an Act of Parliament or an Act of the Scottish Parliament.²

4. How to request a new TPO

Many local authorities have their own policies and procedures which allow individuals to apply for a TPO. The process usually involves filling out a form and providing information relating to the trees in question.

A person requesting a TPO will often need to provide a detailed description of the tree or trees which they wish to protect, as well as a description of the location of the trees.

If your local authority does not have a TPO application procedure which is readily accessible, we recommend that you contact the planning department for information on how best to apply for a TPO.

Local authorities have a wide discretion when deciding whether to make a TPO. The law says that they may make a TPO where it appears to them that either:

- it is 'expedient in the interests of amenity' to make a TPO, or
- the trees, groups of trees or woodlands are of cultural or historical significance.³

5. Procedure for creating a TPO

The 2010 Regulations set out the procedure which is to be followed when making and confirming a TPO.



A TPO must define the position of the tree or trees by using a map. The map must be at scale which is sufficient to give clear indication of the position of the trees.⁴

A TPO takes effect on the date specified in the order. A TPO then expires 6 months after taking effect if it has not been 'confirmed' by the planning authority within that period.⁵

5.1 Procedure before confirming a TPO

Before confirming a TPO, a planning authority must take several steps.⁶ First, they must make a copy of the TPO available for public inspection at a convenient place to the locality in which the affected trees are situated.

Second, they must give notice of the TPO in a newspaper circulating in the locality including the following information:

- The grounds for making the TPO.
- Where and at what times a copy of the TPO may be inspected.
- How '**representations**' may be made to the planning authority (a representation is a comment on whether a TPO should be confirmed or not).
- The date by which any representations may be made (this must be at least 28 days after the date of the notice).

Third, the planning authority must send a copy of the TPO to the Forestry Commission. And lastly, the planning authority must send a copy of the Order to all interested persons,⁷ along with a notice including the information contained in the newspaper notice.

Any person may comment on the TPO by making a representation. The representation must be made in writing, state the grounds of the representation, and specify the particular trees to which it relates. The planning authority must consider any representations before confirming a TPO.⁸



The planning authority may confirm the TPO either with or without any modifications.⁹

5.2 Procedure after confirming a TPO

Once the TPO is confirmed, the planning authority must:

- Record it in the Register of Sasines or register it in the Land Register of Scotland.¹⁰
- Amend the TPO to state whether the confirmation was granted with or without modifications and the date the TPO was confirmed (this is known as 'endorsing' the TPO).¹¹
- Give notice to the Forestry Commission, to all interested persons, and to any person who has objected the order. The notice of the TPO must state the date and the reason for confirming the order, and where modifications are made, the notice must state the reasons for this.
- Make a copy of the TPO available for public inspection in a place which is convenient to the location where the trees are located. The TPO must be accessible free of charge, at all reasonable times at the office of the planning authority.

5.3 Procedure if a TPO is not confirmed

If the planning authority decides not to confirm a TPO, they must:

- Amend the TPO with a statement to that effect, and the date of their decision.
- Give notice to the Forestry Commission, to any interested persons, and to the anyone who has objected the TPO.¹²

6. How to find out if a tree is protected by a TPO

A copy of the TPO must be made available at the office of the planning authority, free of charge and at all reasonable times.



Most local authorities have a list of TPOs on their website, or a map of protected trees in the local authority area. If this is not the case, then individuals should contact the relevant local authority's planning department.

There are also several online tools that can be used to find out what trees are protected. *Scotland's Environment* have developed an [interactive map](#) on their website. A [similar map](#) has been designed by *Spatialhub.scot*.

7. Consequences if a tree protected by a TPO is damaged

Any person will be guilty of a criminal offence if, in contravention of a TPO, they cut down, uproot, wilfully destroy a tree or wilfully damage, top or lop a tree in such manner which is likely to destroy it without the consent of the planning authority.¹³

The penalties for this offence include fines of up to £20,000.¹⁴

If a person contravenes the terms of a TPO with an action which is not mentioned in section 171(1), then that person will be guilty of an offence and liable on summary conviction to a fine up to £2,500.¹⁵

When determining the amount of any fines, the courts will take into consideration whether the person guilty has benefitted financially from their offence.

If a tree has been removed in contravention to a TPO, then the landowner becomes subject to a duty to replace it with a new tree of an appropriate size and species at the same place as soon as they reasonably can.¹⁶ Once planted, a replacement tree will be automatically protected by the original TPO.¹⁷

Local authorities have the power to serve notices on landowners to order them to comply with their duties to replace trees.¹⁸



References

¹ Section 160(3)(a) of the 1997 Act.

² Section 160(6) of the 1997 Act.

³ Section 160(1A) of the 1997 Act.

⁴ Regulation 3 of the 2010 Regulations

⁵ Section 161(1) of the 1997 Act.

⁶ Regulation 4 of the 2010 Regulations.

⁷ The following are 'interested persons': an owner, lessee and occupier of the land on which the trees are situated; and any other person who to the knowledge of the planning authority, would but for the TPO be entitled to fell, top, lop, uproot or otherwise damage or destroy any tree to which the tree preservation order relates; or to work by surface working any material in, on or under such land (Regulation 2 of the 2010 Regulations).

⁸ Regulation 5 of the 2010 Regulations.

⁹ Section 161(1A) of the 1997 Act.

¹⁰ Section 161(2) of the 1997 Act.

¹¹ Regulation 6 of the 2010 Regulations.

¹² Regulation 7 of the 2010 Regulations.

¹³ Section 171(1) of the 1997 Act.

¹⁴ Section 171(2) of the 1997 Act.

¹⁵ Section 171(4) of the 1997 Act. The former needs to be read in conjunction with Section 225(2) of the Criminal Procedure (Scotland) Act 1995, whereby level 4 of the Standard Scale of fine is listed as up to £2,500.

¹⁶ Section 167(1) of the 1997 Act.

¹⁷ Section 167(4) of the 1997 Act.

¹⁸ Section 168 of the 1997 Act.