

INFORMATION NOTE

Tree Preservation Orders

Number: IN 05/09

Property Directorate Sponsor: June Harrop, DE Prop-Land Pol2, 94421 2197 / 0121 311 2197	Date of issue: 20 th April 2009
Contact if different from Property Directorate Sponsor:	
Who Should Read this: All DE Staff, Partners and Contractors involved in Estate Management and Development on the MOD Estate	
When it takes effect: Immediate	When it is due to expire: 30 th April 2010

Equality And Diversity Impact Assessment

This policy has been Equality and Diversity Impact Assessed in accordance with the Department's Equality and Diversity Impact Assessment Tool against:

Part 1 Assessment Only (no diversity impact found).

Document Aim: To inform DE staff, partners and contractors of a recent High Court ruling on Tree Preservation Orders, that could have implications on future developments on the MOD estate.

1. The Town and Country Planning Act 1990 Section 198 gave local authorities the power to place Tree Preservation Orders (TPO) to preserve trees, groups of trees and woodlands. The Town and Country Planning Act 2004 removed Crown Immunity from the Planning Acts including TPOs. Local Authorities in England and Wales, through the Forestry Commission, can now place TPOs on trees and woodland on the MOD Estate.
2. A recent High Court case (Palm Court Developments v Secretary of State for Communities and Local Government) highlighted the lack of a statutory definition of a tree within the 1990 Act. The main issue determined in the case related to whether trees planted or self-seeded after a TPO has been made on an area of woodland are protected by the order. The judge, Mr Justice Cranston, concluded that with there are no limitations in terms of size for what is to be treated, under a TPO, as a tree i.e. a sapling is a tree. This interpretation means that a TPO for a woodland extends to all trees in the woodland, even if not in existence at the time the order is made.
3. The case may also have ramifications for those managing or maintaining properties within a Conservation Area. All trees in a Conservation Area are subject to controls which enable local authorities to protect the special character of the area. Notice is required ahead of undertaking works

affecting a 'tree' and the local authority has an opportunity to issue a TPO to prohibit or control those works. The implication of the case is that notice may be required to carry out works on new and small trees within a Conservation Area as well as to more established trees. Caution should therefore be taken in allowing any new planting in a potential development area.

4. All those concerned with the management and maintenance of woodlands and trees on the MOD Estate should be aware of the ruling and the possible implications of TPOs on woodland management and future site developments. Further information on TPO procedures can be found at

[Tree Preservation Orders: A Guide to the Law and Good Practice - Planning, building and the environment - Communities and Local Government](#)

and

[Tree Preservation Orders: A Guide to the Law and Good Practice - Addendum September 2008 \(including model TPO\) - Planning, building and the environment - Communities and Local Government](#)