

**EXPLANATORY MEMORANDUM TO  
THE TOWN AND COUNTRY PLANNING (TREES) (AMENDMENT)  
(ENGLAND) REGULATIONS 2008**

**2008 No. 2260**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 This instrument makes amendments to the Town and Country Planning (Trees) Regulations 1999 (SI 1999/1892) (“the 1999 Regulations”). It provides for use of a standard application form for applications for consent under a tree preservation order (“TPO”). It substitutes a new Part 4 of the 1999 Regulations to provide new procedures for appeals without a hearing or inquiry under section 78 of the Town and Country Planning Act 1990 (“the 1990 Act”) as applied under TPOs and to appeals against tree replacement notices under section 208 of the 1990 Act.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The current Planning Bill contains powers, currently clause 186, to simplify TPOs and enable much of the detail presently contained in a TPO to be moved to regulations. If these powers become available, it is intended that the existing 1999 Regulations will be replaced entirely with new regulations in the next two years.

4. **Legislative Background**

4.1 Sections 198(8) and 199(2) of the 1990 Act provide the Secretary of State with powers to make regulations with respect to the form and making of TPOs and requirements for applications for consent under a TPO. The current regulations are the 1999 Regulations, which incorporate a model form of TPO in the Schedule to the Regulations.

4.2 These amending Regulations amend the 1999 Regulations in two principal ways; by requiring the use of a standard application form for applications for consent for cutting down, topping, lopping or uprooting any tree protected by a TPO, and by replacing Part 4 of the 1999 Regulations relating to procedure for written representation appeals (as applied to TPOs and against tree replacement notices) and substituting a streamlined procedure.

5. **Territorial Extent and Application**

This instrument applies in relation to England only.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

## *Policy*

7.1 TPOs are made by local planning authorities to protect selected trees and woodlands in the interests of amenity. TPOs prohibit the cutting down, uprooting, topping, lopping, wilful destruction or wilful damage of protected trees without the consent of the local planning authority.

7.2 At present, an application to carry out works to a protected tree does not have to be submitted on a form. The statutory requirement is that an application is made in writing to the local planning authority which identifies the trees to which the application relates, specifying the proposed operations and stating the reasons for making the application. In dealing with a TPO application, the local planning authority's role is to consider whether the reasons given in support of the application outweigh the amenity reasons for protecting the tree.

7.3 Most planning authorities have produced their own forms. Variations in style and content of these forms have resulted in inconsistencies in the level of information required. In addition, local authorities often receive incomplete or vague applications. They are obliged, therefore, to channel resources into seeking the additional information which they consider necessary to determine the application.

7.4 If someone is aggrieved by a local authority's decision on their application to fell or prune a protected tree, or by their failure to make a decision, they have the right of appeal to the Secretary of State. Similar rights of appeal also apply in relation to notices enforcing replanting requirements, known as tree replacement notices. About 750 TPO appeals are made to the Secretary of State each year. The majority are determined on the basis of an exchange of written representations with a few being the subject of informal hearings. Even those appeals which follow the written route take an average of around 26 weeks from start to decision.

7.5 In many cases the appeal is not a review of the merits of the local authority's decision but involves consideration of new information which is submitted by the parties with the appeal or even at a later stage. The result is that the case before the Secretary of State may differ significantly from that originally considered by the local planning authority.

7.6 The purpose of amending the 1999 Regulations is to make the process more efficient and accessible to those using the system. This will be achieved by:

- Making it a statutory requirement for all applications for the cutting down, topping, lopping or uprooting of trees under a TPO to be made on a standard application form prescribed by the Secretary of State. Applicants will have the choice of submitting their application on a paper or electronic form. The electronic form will be hosted by the Planning Portal.
- Where it is claimed that the works are required because a tree is unhealthy or unsafe, or implicated in property damage eg caused by subsidence, appropriate supporting information, as specified on the form, must also be included with the application.
- Any application which is not submitted on a standard form, or is incomplete, or fails to include the required documentation will be invalid.
- Introducing a fast track procedure for dealing with TPO appeals (including appeals against tree replacement notices). The appeal decision will be made on the basis of the application originally made to the local planning authority, together with any third party comments received at that time and following a visit to the site by an appointed Inspector. Where appropriate, the appeal would be handled by an Inspector with suitable arboricultural expertise.

## *Consultation*

7.7 A consultation paper on improving procedures for TPOs was published on the Communities and Local Government website in November 2007. It was drawn to the attention of

a wide range of bodies, including local planning authorities, tree consultants and contractors, professional organisations and other Government Departments and Agencies by means of e-mail and letter. The consultation ran for 12 weeks. A total of 105 responses were received.

7.8 The principle of introducing a standard application form for a wide range of planning applications as well as for consent to carry out works to trees protected by a TPO was subject to an earlier consultation exercise undertaken in 2005. The report of that consultation exercise<sup>1</sup> indicated that the majority of the 149 respondents (56%) who submitted comments via email and letter stated that they agreed with the principle of introducing a standard approach to handling planning applications. Only a very small number of explicitly negative responses were received (3%). Standard application forms are now mandatory for most forms of planning application. The purpose of the more recent consultation exercise was to seek views on the content of the form for consent to undertake works to protected trees, and in particular, views on whether they should set out at the national level, the requirements for supporting evidence (e.g. on the health of trees or evidence of subsidence caused by trees), as well as testing whether the questions were clearly expressed, that they were in a logical sequence and that the guidance notes provided sufficient information.

7.9 The majority of respondents (70%) agreed that the supporting information should be specified through the form at a national level, although 16% commented that the form should provide greater flexibility. As a result, the draft Regulations have been revised to clarify the nature of the necessary additional information, and the guidance provides further explanation of the content to ensure it is appropriate to the specific circumstances of the case. There were also many presentational comments, which have been taken on board where appropriate.

7.10 The majority of respondents (69%) also agreed that the proposed fast track appeals procedure was fair and reasonable. Only 5% of respondents thought that restricting the introduction of new evidence at the appeal stage would potentially prejudice the interests of appellants because they felt that there were circumstances where additional information would have become available, for example, as a result of ongoing site monitoring. However, there are specific provisions to enable the Inspector to require further information where they consider it to be necessary.

7.11 The consultation exercise also considered the option of removing the requirement for local planning authorities to send copies of TPOs to all owners and occupiers of adjoining land. However, a strong case was made for ensuring that neighbours who might otherwise have a common law right to carry out work to the protected tree(s) are also made aware, so that they do not inadvertently contravene a TPO. Unfortunately, the consultation exercise did not provide sufficient clarity about options which would reduce unnecessary burden on local authorities while ensuring that the 'necessary' people are made aware of the presence of protected trees and further consideration will be given to this issue. It was decided not to bring forward this change at this time.

### *Guidance*

7.12 Guidance on the completion of the Standard Application Form will be included with the form. Guidance on TPOs generally, *'Tree Preservation Orders – A Guide to the Law and Good Practice'*, will be revised to take account of the changes brought about by the Regulations.

## **8. Impact**

8.1 An Impact Assessment is attached to this memorandum.

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<sup>1</sup> <http://www.communities.gov.uk/documents/planningandbuilding/pdf/standardapplicationresponses.pdf>

8.2 The impact on the public sector is likely to be a saving of between £183,000 and £243,000 per annum through a reduction in the time local authorities spend obtaining additional information at the application stage, and from the fast tracked appeals system.

## **9. Contact**

Peter Annett at Communities and Local Government Tel: 020 7944 5615 or e-mail: [peter.annett@communities.gsi.gov.uk](mailto:peter.annett@communities.gsi.gov.uk) can answer any queries regarding the instrument.

## Summary: Intervention & Options

<b>Department /Agency:</b>	<b>Title:</b> <b>Impact Assessment of introducing a standard application for proposals to fell or prune protected trees</b>	
<b>Stage:</b> Final	<b>Version:</b>	<b>Date:</b> August 2008
<b>Related Publications:</b> Tree Preservation Orders: Improving Procedures		

**Available to view or download at:**

<http://www.communities.gov.uk>

**Contact for enquiries:** Peter Annett

**Telephone:** 0207 944 5615

**What is the problem under consideration? Why is government intervention necessary?**

Application forms for proposals to carry out works to trees protected by tree preservation orders (TPOs) vary from one local planning authority to the next. A number of difficulties can arise, including: (1) inconsistencies of approach across local government, (2) unreasonable requests for excessive information; and (3) the submission of incomplete or inadequate applications. In addition, the existing TPO appeals system is excessively long winded taking on average 26 weeks from start to decision. Government intervention is necessary to secure a consistent, clear and proportionate application and appeals process.

**What are the policy objectives and the intended effects?**

It is established Government policy to introduce “standard” forms across a wide range of applications for permissions and other consents in the planning system (e.g. planning permission, and listed building consents). The objectives are to secure an efficient, predictable and streamlined planning service.

**What policy options have been considered? Please justify any preferred option.**

Two options:

- (1) do nothing;
- (2) introduce a single standard application form, prescribed by the Secretary of State, which in appropriate cases, will need to be accompanied by supporting technical reports.

Option (2) is preferred for the reasons given above.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**      3 years after implementation.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister:

Kay Andrews

.Date: 21<sup>st</sup> August 2008

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' Costs to applicants of commissioning an arboriculturist where it is claimed that a tree is unhealthy or unsafe.		
	<b>One-off</b> (Transition) <span style="float: right;">Yrs</span>			
	£			
	<b>Average Annual Cost</b> (excluding one-off)			
	<b>£ 20,050 - £80,200</b>	<b>Total Cost (PV)</b>	<b>£ 170,000 - £667,000</b>	
Other <b>key non-monetised costs</b> by 'main affected groups'				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' Savings to LPAs £191,000 Savings to applicants £72,180		
	<b>One-off</b> <span style="float: right;">Yrs</span>			
	£			
	<b>Average Annual Benefit</b> (excluding one-off)			
	<b>£ 263,180</b>	<b>Total Benefit (PV)</b>	<b>£ 2,189,000</b>	
Other <b>key non-monetised benefits</b> by 'main affected groups' Better evidence base for decisions. Possibility of fewer appeals, and quicker appeal decisions. Potential savings from increased use of electronic applications. Uncosted savings to members of the public making applications from filling in forms more quickly.				

Key Assumptions/Sensitivities/Risks
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Price Base Year 2007	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ 1,522,000 - £2,019,000</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ see range</b>
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What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	2008			
Which organisation(s) will enforce the policy?	Local authorities			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices) SEE ANNEX		(Increase - Decrease)	
Increase of	£ 2000 - £8000	Decrease of	£ 123,000
		<b>Net Impact</b>	<b>£ 118,000</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### Purpose and Intended Effect of Measure

#### Objective

1. To provide a quicker, more predictable and efficient planning system; to improve the quality of applications for consent to fell or prune trees protected by a tree preservation order (TPO); to prevent unnecessary delay in their handling by local planning authorities (LPAs); to facilitate the electronic handling of applications; and to introduce a fast track procedure for dealing with TPO appeals.

#### Background

##### *Making of TPOs*

2. TPOs are made by local planning authorities to protect selected trees and woodlands in the interests of amenity. TPOs prohibit the cutting down, uprooting, topping, lopping, wilful destruction or wilful damage of trees without the local planning authority's consent.

3. The Town and Country Planning (Trees) Regulations 1999 require local planning authorities, when they have made a new TPO or reviewed an existing one, to send copies of the TPO not only to the owners and occupiers of the land where the trees are situated but also to the owners and occupiers of any adjoining land.

##### *Applying for consent to fell or prune a protected tree*

4. If someone proposes to fell or prune trees protected by a TPO there is a statutory requirement that they apply in writing to the local planning authority, identifying the trees they wish to undertake work to, specifying the operations for which consent is sought and stating the reasons for making the application. There is no requirement to use a form, although most planning authorities have produced their own. Data for 2003/4 indicates that there are approximately 41,000 applications made to local authorities in England each year<sup>2</sup>.

##### *Appealing against a local authorities decision*

5. If someone is aggrieved by a local planning authority's decision (or by their failure to make a decision), they have the right to of appeal to the Secretary of State. Similar rights of appeal also apply in relation to notices enforcing replanting of replacement trees. In 2003/4 there were 660 appeals<sup>3</sup>, equivalent to 1.6% of the applications. The handling of TPO appeal casework was recently transferred from the nine Government Offices for the Regions to the Planning Inspectorate, although the appeal process remains unchanged.

#### Rationale for Government Intervention

##### *Making of TPOs*

6. The requirement to send copies of TPOs to the owners and occupiers of any adjoining land, has resulted in local planning authorities sending multiple copies of TPOs to all the occupiers of neighbouring blocks of flats (in some cases to over 300 residencies) even though they may be located some distance from the trees in question. This is not considered to be an effective means of informing people how the amenity of their area is being protected, and may be discouraging planning authorities from reviewing or updating their TPOs. The proposal was to

<sup>2</sup> See footnote 8 for further explanation.

<sup>3</sup> CLG data collected from the Government Offices.

revert to the pre-1999 position whereby copies of TPOs would be sent only to the owners and occupiers of the land where the trees covered by the TPO are situated. However, as a result of responses to the consultation exercise it has been decided not to bring forward this change (see paragraph 16).

#### *Applying for consent to fell or prune a protected tree*

7. Variations in the style and content of the forms produced by different local planning authorities have led to inconsistencies in the level of information requested, and the need for them in many cases to go back to the applicant requesting additional information to enable them to make an informed decision. The situation is compounded when applicants do not provide sufficient information, are aggrieved by the eventual decision, and appeal to the Secretary of State.

8. We propose to amend the Town and Country Planning (Trees) Regulations 1999 to require that all applications to fell or prune protected trees are submitted on a standard form prescribed by the Secretary of State, either electronically or on paper. The form will set out what information is required to make the application valid. A draft form has been the subject of public consultation.

#### *Appealing against a local authorities decision*

9. The current appeals system, in practice, is not a review of the merits of the local authority's decision but often involves consideration of the application afresh, with new information provided by the parties during the appeal, and with several 'rounds' of consultation with the parties to enable them to comment on the new information. As a result, written representations take an average of 26 weeks from start to the decision. This is unnecessarily slow and bureaucratic.

10. The proposal is to amend the 1999 Regulations to introduce a fast track appeals system, which will be based on the information provided at the application stage (which, subject to the proposed changes going forward, will be the information in the standard application form, together with any associated supporting evidence and a site visit by an Inspector). To speed up the process further, it is proposed to delegate the decision making to the appointed Inspector instead of the Inspector reporting to the Secretary of State who then determines the appeal.

#### • Groups affected

11. The proposals will directly affect:

- All those who apply for consent to fell or prune trees protected by a TPO;
- All LPAs in England;
- The Planning Inspectorate.

### **Options**

12. Two options have been considered:

(1) Do nothing – maintaining the existing system with each LPA producing its own application form and retain the existing appeals system.

(2) Make Regulations:

- to remove the requirement for local planning authorities to send copies of TPOs to all owners and occupiers of adjoining land (although this proposal is no longer being taken forward – see paragraph 16 below);

- to introduce a standard application form, the use of which would be mandatory for all applications to fell or prune protected trees, and where appropriate, would require the submission of specific additional information;

- to introduce a fast track appeals system within which decisions are based on the information provided on the standard application form, together where appropriate, with the supporting evidence and a visit to the site by an Inspector;
- delegate decisions to appointed Inspectors.

## Consultation

13. There have been three separate consultation exercises associated with the proposed changes to the TPO system. The first ran from 24 March to 28 June 2005 and dealt with the general principle of introducing a standard application form for a range of planning application types and related consent regimes including TPOs<sup>4</sup>. A second which ran from 21 May to 17 August 2007, proposed making changes to the appeals system to make it more efficient. This included introducing a fast track procedure for dealing with appeals and delegating decisions to Inspectors appointed by the Planning Inspectorate<sup>5</sup>.

14. The third and most recent consultation exercise, and the main subject of this Impact Assessment, did not seek to duplicate the earlier work but sought views on the details of the proposals, including:

- who should be notified when a TPO is made;
- the content and layout of a standard application form for work to trees and associated guidance;
- the nature of the supporting information required when it is alleged that work is required to a protected tree because it is causing structural damage to buildings and other structures, or for reasons of safety or the health of the tree;
- the fast track appeals mechanism; and
- whether decisions on appeals should be delegated to Inspectors appointed by the Planning Inspectorate.

15. A public consultation exercise on the draft proposals ran for 12 weeks from 27th November 2007 until 19th February 2008. There were 105 responses, of which 58 were from local authorities, 14 from public and private companies (such as tree surgeons and consultants), 9 local organisations (including parish councils), 7 national representative bodies (including the Woodland Trust and the Council for the Protection of Rural England), two Government Agencies (Natural England and the Planning Inspectorate) and 14 individuals. A detailed summary of the consultation responses is at:

<http://www.communities.gov.uk/> [*Address to be completed when known ahead of publication*]

## Changes as a result of the consultation exercise

16. As a result of the comments received from the latest consultation exercise, the Government has decided to make the Regulations proposed in the consultation exercises, but with a number of changes:

- The Government has decided at this time not to amend the Regulations to remove the requirement for local planning authorities to send copies of TPOs to all owners and occupiers of adjoining land. There was general agreement that it is not the best use of local authority resources to send copies to all owners and occupiers of adjoining land, but

<sup>4</sup> Standard Application Form ODPM March 2005.

<http://www.communities.gov.uk/archived/publications/planningandbuilding/standardapplicationconsultation>

<sup>5</sup> Communities and Local Government (2007) Improving the Appeal Process in the Planning System – Making it proportionate, customer focused, efficient and well resourced.

<http://www.communities.gov.uk/archived/publications/planningandbuilding/improvingappealconsultation>

a strong case was made for ensuring that neighbours who might otherwise have a common law right to carry out work to the protected tree(s) are also made aware, so that they do not inadvertently contravene a TPO. Unfortunately, the consultation exercise did not provide sufficient clarity about options which would reduce unnecessary burden on local authorities while ensuring that the 'necessary' people are made aware of the presence of protected trees and further consideration will be given to this issue.

- To provide flexibility to respond to the specifics of individual cases the wording of Regulation 9A(c) has been amended to allow a more proportionate approach to the requirements for supporting information (e.g. in appropriate cases, allowing a letter from an arboricultural consultant rather than a formal report).

## Costs and Benefits

### Option 1 – Do-nothing

17. No new costs or benefits would arise from maintaining the existing system.

Option 2 – introduce a standard application form and where appropriate, require the submission of specific additional information, introduce a fast track appeals system, including delegating decisions to appointed Inspectors.

## Benefits to LPAs

18. The following analysis calculates the current costs to LPAs of handling applications for consent to carry out work to protected trees, and the likely costs if a standard application form is introduced.

19. The recent *Planning Costs and Fees* report<sup>6</sup> estimated the total base salary cost of planning-related work in England at about £485 million, not including overheads. This figure was broken down into a wide range of "work areas", such as development control, enforcement, development plans and so on. The salary costs of work on "tree preservation orders" (which would include, but not be restricted to, work on applications for consent) was estimated at around £9 million.

20. *Trees in Towns II* research (Communities and Local Government – 2008) indicates that the average time spent each year by an LPA on "TPOs" is 1.17 full time equivalent. Assuming an average salary of £23,000 (the mid-point of salary band G: £21,000-£25,000), this equates to £26,910 per LPA (£23,000 x 1.17), and so £9.7 million for the country as a whole (£26,910 x 362). This correlates reasonably well with the £9 million figure estimated in the 2007 Arup/CLG report, given that a small proportion of the average 1.17 full time equivalent includes administrative time, for which the average base salary is significantly lower than £23,000. Estimating overheads as 20% of staff costs for national insurance and pension contributions plus £10,180 per full time equivalent (office space, IT equipment etc) from the Government Office Tariff, produces a total cost of £15,190,000 (£9,000,000 + £6,198,000) on TPO-related work.

21. What proportion of this £15.19 million is dedicated to the processing of applications to fell or prune protected trees? Using the following assumptions which are based on discussions with local authority officers and confirmed by responses to the consultation exercise:

(1) that a straightforward application requires 30 minutes of an administrator's time and 2 hours of a tree officer's time;

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<sup>6</sup> Arup with Addison & Associates: *Planning Costs and Fees* (Communities and Local Government, 2007)

(2) that a “complex” case<sup>7</sup> requires 30 minutes of an administrator’s time and 4 hours of a tree officer’s time;

(3) that these complex cases comprise 10% of the total number of applications; and

(4) that the introduction of a standard application form and the requirement for supporting evidence at the application stage will eliminate the “extra” time spent dealing with complex cases, and so provide a saving of 2 hours of tree officer time (whose average base salary of £23,000) per application.

<b>Table 1: Estimated costs and savings to LPAs of using a standard application form</b>			
Tree officer time saved processing complex applications	Reduction in tree officer time spent handling applications	Reduction in salary cost from reduced tree officer input	Overall saving to LPAs
For 10% of cases Tree Officer – 2 hours <sup>8</sup> (4 hours without standard form, 2 hours with standard form)	40,100 <sup>9</sup> x 10% x 2 hours = 8,020 hours or 5.06 full time equivalents (8,020/1584) <sup>10</sup>	Salary = £23,000 Cost = £116,380 (5.06 x £23,000)	£116,380 or 5.06 full time equivalents + overheads of £74,789 [(£23,000 x 20% x 5.06) + (£10,180 x 5.06)] <sup>11</sup> = £191,167 or <b>£191,000 approx</b>

22. The earlier Impact Assessment on Improving the Appeal Process in the Planning System<sup>12</sup> considered the introduction of fast track appeals for TPO cases and concluded there would be neither financial costs nor benefits to local authorities.

### Benefits to applicants

23. The majority of TPO applications are made directly by the general public, with a smaller number (assumed to be around 10%<sup>13</sup>) by professional advisers (e.g. arboricultural contractors

<sup>7</sup> Complex cases are those that take up a disproportionate amount of a tree officer’s time. They usually include applications which, for one reason or another, are vague or incomplete, or where, due to the technical nature of the application (in particular, applications where it is claimed that trees have caused subsidence damage to property), the LPA believe that further information is needed from the applicant before a balanced decision can be made.

<sup>8</sup> Communities and Local Government estimate based on our knowledge of TPO applications.

<sup>9</sup> Based on a survey of 194 LPAs which recorded a total of 19,992 applications in 2003/4 – indicating an average of 103 applications per authority per year. Multiplying this figure by 389 (i.e. the total number of authorities which can make TPOs) gives a total of around 40,100 for all authorities in England. Source – Trees in Towns II (Communities and Local Government, in press).

<sup>10</sup> Number of hours in a working year (220 days x 7.2 hours = 1584 hours).

<sup>11</sup> 20% for pensions and national insurance and accommodation costs from Government Office Tariff at £10,800 per full time equivalent.

<sup>12</sup> Communities and Local Government (2007) Improving the Appeal Process in the Planning System – Making it proportionate, customer focused, efficient and well resourced.

<sup>13</sup> There are many companies and individuals involved in this work (the Arboricultural Association suggests 15,000 individuals) and data are not collected centrally. However, professional advisers tend to be involved in the more technical cases and therefore a similar figure is given here to that used earlier for ‘complex’ cases.

and consultants or surveyors) working on behalf of the public or more commonly for insurance companies investigating claims of subsidence. The standard form should provide a more consistent approach to making applications across the country, and with appropriate guidance on how to fill in the form should make them simpler and quicker to complete and submit. There should therefore be non-monetised savings in terms of time to private individuals who make their own application.

### **Benefits to business**

24. There should also be savings for professional advisers from using a standard form. At present they have to fill out different forms and provide different information depending on which planning authority they are applying to. Representatives of the industry<sup>14</sup> attending a series of workshops held by CLG (ODPM) in 2006 to discuss proposed changes to the TPO system suggested that the standard application form could result in a cost saving to them of 9% per application.

25. On the basis that 10% of the 40,100 applications each year are made by professional advisers, and the average cost for their work is £200 per application<sup>15</sup>, the total cost of this work is :

$4,010 \times £200 = £802,000$ ;

– and assuming a 9% saving, the total saving is:

$802,000 \times 9\% = \mathbf{£72,180}$ .

It is presumed that this saving will be passed on to the client.

26. The benefit of a fast track appeals system would be in terms of the speed of decision, predicted to fall from an average of 26 weeks to 12 weeks.

### **Benefits of requirement to submit evidence with the application.**

27. Informal feedback from local authorities and the experience of cases coming through to appeal has shown that many cases had insufficient supporting evidence to allow local authorities to make informed decisions at the application stage without having to go back to the applicant. Such evidence is often only provided once a local authority has not given consent and the case goes to appeal. Had the evidence provided at appeal on technical cases been available at the application stage this would have enabled a more considered assessment and reduced the number of appeals. This was particularly true of those cases related to alleged structural damage to buildings (accounting for over 90% of technical cases).

28. Requiring evidence to be submitted at the application stage in these technical cases should therefore provide a better evidence base for decision making. This should result in sounder decisions being taken, and reduce the number of cases where alleged structural damage or tree health was not the real reason for the application. It also has the advantage of enabling the Planning Inspectorate to handle tree appeals more quickly, without compromising the quality of their decisions. This benefit has been monetised as part of the Impact Assessment for fast tracking appeals.<sup>16</sup>

### **Other benefits**

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<sup>14</sup> This included arboricultural consultants, tree surgeons and companies that act on behalf of insurance companies

<sup>15</sup> Figure based on discussions with arboricultural contractors and consultants and includes a site visit, assessment of the required works and making an application to the local authority.

<sup>16</sup> *Improving the Appeal Process in the Planning System: Making it proportionate, customer focused, efficient and well resourced* (21 May 2007) Communities and Local Government. The total saving for TPO appeals estimated from this IA was £535,000. This, however, includes savings which are not from the use of a standardised form and the IA did not consider the costs of the additional information required in some cases.

29. The introduction of a standard application form will complement other changes being proposed to the TPO system (which were included in an earlier consultation exercise – see above), such as the transfer of appeals from the Government Office to PINS and the intention to base appeals on the papers that were available to the local authority when they first made their decision.

### **Costs to LPAs**

30. No additional costs to local authorities have been identified. Most LPAs were unable to provide figures for the cost to them of dealing with TPO applications. Where data was supplied, it varied from £40 to £380 per application with the majority of those that provided figures indicating a cost of around £100. This excluded applications that went to appeal, in which case costs would be higher - but they were not quantified. The comment was made in a number of responses to the consultation exercise that in rural areas, it is sometimes necessary for tree officers to drive for up to 2 hours to carry out a site visit, leading to greater staff input and higher costs. However, as the current proposals will not affect this aspect of their work (i.e. it will still take as long to drive to a site), the cost of site visits will not change.

### **Costs to applicants**

31. The proposed standard form will require applicants to submit evidence to support their proposals in certain circumstances: (1) where it is alleged that trees have caused subsidence damage to buildings and other structures; and (2) where it is alleged that trees are unhealthy or unsafe (but do not fall within the exemptions of dead, dying or dangerous). As indicated in paragraph 22, it is assumed that 10% of applications (4,010 applications) will require supporting evidence.

32. Information from companies which act on behalf of tree owners indicated that their costs for producing specialist reports could vary from £75 to £1500<sup>17</sup>. One respondent indicated that the minimum fee for inspection, reporting and submitting an application was around the £200 figure used in the consultation paper (rising to £350 for cases that went to appeal), while two other respondents thought the £200 figure was an underestimate without providing an alternative. With such a wide range of costs, from a very small number of respondents, it is difficult to determine an average cost. However, as we now propose to introduce a more flexible approach to the new reporting requirements (see paragraph 16) - this should in some cases reduce the cost. For example, current fees to confirm the identification of a pest or disease affecting a tree are about £50<sup>18</sup>. The average figure of £200 per case should therefore be on the high side, but not too far off the mark, and is therefore consistent with the figure used earlier in paragraph 24.

33. However, in most cases, and particularly those that relate to alleged structural damage to buildings most local authorities (and insurance companies) already require some form of evidence. The standard application form will include detailed guidance on the nature of the information necessary to support technical cases, and should therefore result in a more consistent approach. In some cases this may result in a more detailed report than at present and in others less. The key difference is that the report will need to be produced at the beginning of the process rather than half way through when the local authority indicates it needs it to make an informed decision.

34. In relation to applications which allege that protected trees have caused subsidence damage, many of the associated investigative costs (site and soil investigations, arboricultural reports and monitoring operations) are already incurred as a matter of good practice. Where the investigation is part of an insurance claim, this would be included in the overall cost of the claim.

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<sup>17</sup> This upper figure would usually involve multiple trees in particularly complex cases requiring detailed investigation).

<sup>18</sup> Figure provided by the Forestry Commission.

35. The main new cost will therefore relate to those of 'technical' cases which involve alleged tree health or safety issues, and where in the past applicants have often relied on the site visit from the local authority tree officer to confirm that there is a problem. This is estimated to related to 10% of technical cases (which as indicated earlier are 10% of all cases). The new procedures will require this work to be done by the applicant (usually with professional input) before the application is made, which as indicated above, will cost between say £50 and £200.

36. Assuming as a worse case scenario that this will be a new requirement for all 401 applications<sup>19</sup>, the additional cost will fall somewhere between:

$401 \times £50 = \mathbf{£20,050}$

and  $401 \times £200 = \mathbf{£80,200}$ ,

and probably towards the lower end as this is not, in reality, a completely new requirement.

### **Costs to business**

37. If it is also assumed that 10% of these technical cases are made by businesses, the additional new cost to them will be 10% of the overall cost calculated in paragraph 36 – i.e. in the range £2,000 - £8,000 giving a mid point of **£5,000**.

### **Summary**

38. The total savings are estimated to be:

$£191,000 + £72,180 = £263,180$ .

The additional costs are estimated to be between £20,050 and £80,200 – giving a **net saving of between £182,980 and £243,130 per annum**.

39. Taken as a package with the proposed changes to the tree appeals system, including the transfer of appeals to the Planning Inspectorate which it is estimated will save £535,000<sup>20</sup>, gives an overall saving of between £717,980 and £778,130.

### **Specific Impact Tests**

#### Competition Assessment

The effects on competition have been considered and there is believed to be no impact.

#### Small Firms

There could be a small but positive impact for a few companies that may be asked by applicants to assess the health or safety of trees, in advance of making an application to undertake works to protected trees.

#### Legal Aid Impact

No impact on legal aid has been identified.

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<sup>19</sup> i.e. 10% of the 4,010 technical cases

<sup>20</sup> See footnote 4.

### Sustainable Development/ Other Environmental Impact

There would be potential benefits from better decisions being made due as a result of more information being required at the application stage.

### Carbon Impact

No impact on carbon has been identified.

### Health Impact

No impact on health has been identified.

### Race Equality/Disability Equality/Gender Equality Impacts

A screening exercise has been undertaken and no impact on race equality, disability equality or gender equality has been identified.

### Human Rights Impact

No impact on human rights has been identified.

### Rural Proofing

No rural proofing issues have been identified.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No



### **Calculation of Administrative Burdens**

Total cost from baseline £1,368,900

Total saving 9% (see paragraph 9).

Projected saving from baseline:

$$\begin{aligned} & \text{£1,368,900} * 9\% \\ & = \text{£123,120} \end{aligned}$$

This figure has not been used for the calculation of the benefits as we have reason to believe that the £200 figure from the evidence base is accurate as it reflects a larger sample. However it has been used to calculate the administrative burdens effect as there is a need to be consistent with the initial baselines.

The burden on business is estimated to be £5,000 (see paragraph 37).