

Press Release

Authors: Keiron Hart (BSc Hons, C.Env, F.Arbor.A, MICFor) Head of Insurance Services, Marishal Thompson Group www.marishalthompson.co.uk

Contact:

T: 08702 416 180

F: 08702 414 339

M: 07515 993 354

E: keiron.hart@marishalthompson.co.uk

Proposed Title:

Proposed Changes to TPO legislation

On the 28th September the government announced a consultaion on the existing TPO legislation. The consultation closes on the 20th December 2010. We have been advised by Government that unless there are significant issues and objections arising from the consultation the regulations will come into force in April 2011. Failing this they are likely to be introduced in October 2011. The overall aim is to reduce the administrative burden on local authorities, thus delivering a cost saving. Below is a summary of the changes with a view on the potential impact they may have.

Simplified TPO

Anyone who has ever seen, or read a TPO will understand it is a complex legal document. The proposals seek to reduce this to only a plan and schedule. This will have the advantage of ensuring that the document is simplified. However, the government has not detailed how the proposed change will ensure that the relevant legislation and legal information is fully conveyed to those affected. The proposal is also retrospective meaning every TPO ever made will be stripped down to only the plan and schedule. This could create issues surrounding the legality of those TPO's. It seems highly unlikely that Councils will reserve their existing TPOs. We are also aware that Councils are, in many cases, unable to demonstrate the legal validity of their older TPO's. There will therefore be an issue with 'replacing' an older invalid TPO with the revised regulations. Ultimately the Courts will decide the legality of such a change.

Simplified Serving Procedure

Since 1999 all those with a boundary on a site affected by a new TPO must be served with a copy of the TPO. The new proposal is to include only those affected by the trees. This suggests that those people adjoining the site on one boundary where trees overhang that boundary would all receive a copy of any new TPO, those on the other boundaries, well away from the trees, would not. This approach will be discretionary and we have concerns that without precise guidelines on serving of TPO's issues will arise surrounding uncertainty. This is particularly true with subsidence issues where trees at quite considerable distances can be influencing properties. The reality is that we all undertake the appropriate check prior to undertaking tree works so there should ultimately be little overall impact.



Marishal Thompson Group
www.marishalthompson.co.uk

T: 08702 416 180
F: 08702 414 339

office@marishalthompson.co.uk

Press Release

Compensation for All

The current system sees all TPO's administered under the legislation they were created. As such a TPO from 2000 is administered under the legislation relevant at that time, whilst one from the 1970's will be administered under a different set of rules. This is a complicated system which generates confusion. The proposal is to consolidate all TPO's under one set of legislation and deliver consistency and fairness by removing the ability to serve Article 5 certificates. Article 5 certificates remove the right to seek compensation. Whilst TPO's only affect a small % of the overall subsidence claims in the UK each year the impact of an Article 5 certificate can be significant. As a company we are aware of multiple claims where insurers have faced costs in excess of 100K as a result of an Article 5 being served (and upheld on appeal). Certain exemptions will remain but in summary, if the changes are implemented we will be in a position where all TPO refusals that lead to additional costs as a result will allow for a compensation claim to be made. This change is to be welcomed.

Time Limited Permissions & Repeat Works

Proposals seek to limit the length of time a TPO decision notice is valid to 12 months. Again, instances where this is an issue will be rare. However, in complex cases of 3rd party mitigation a decision notice valid for 12 months may not be sufficient to ensure time is available to negotiate removal. We are proposing a 2 year time limit if one is to be adopted.

In addition it can be difficult to secure permission for ongoing maintenance work to a tree (for example "Re-pollard at 4 year intervals"). This has created a situation whereby repeat applications are required. The proposed changes seek to introduce a system where repeat operations can be approved. This could deliver a real benefit in allowing the long term maintenance of a future risk or current claim tree to a defined specification without the need to apply each time the work is required. It is actually possible for Councils to do this under the current legislation but awareness amongst tree officers is low.

Other changes are proposed and the above is only a summary. We believe some opportunities are being missed. Stipulating that all TPO information should be available online would incur an upfront cost on many Local Authorities. However, we are aware that most of these checks are undertaken manually and on a national scale this will be having a considerable cost implication. Furthermore, there is great variety in how quickly this information is received when requests are made. We will continue to lobby for consideration that all TPO information be placed online. This is something that has been mooted by Government for many years but has never materialised.

As a final thought these changes to the legislation should not be viewed as the whole picture. There remain many discrepancies regarding how different local authorities administer TPO's and it seems unlikely that a change to the legislation will deliver a more standard approach. It seems more likely that regardless of the changes there will still be issues of interpretation of the law to be addressed on a case by case, authority by authority basis.



Marishal Thompson Group
www.marishalthompson.co.uk

T: 08702 416 180
F: 08702 414 339

office@marishalthompson.co.uk