

## Crown Land

2.4 A TPO may only be made for trees on Crown land<sup>10</sup> with the consent of the appropriate authority.<sup>11</sup> In most cases the 'appropriate authority' will be either the Government department managing the land or the Crown Estate (see Annex 1). Section 300 of the Act makes special provision for the making of TPOs on Crown land in anticipation of that land being transferred to a private interest, although again the prior consent of the appropriate authority is required. A TPO made under section 300 takes effect provisionally as soon as the land ceases to be Crown land, but must then be confirmed by the LPA in the normal way (for guidance on confirming TPOs see [Chapter 3](#)).

2.5 Before requesting consent to make a TPO, LPAs are advised to make telephone enquiries to identify the person or office responsible for managing the Crown land in question. Government departments have no objection in principle to the making of TPOs on Crown land, and their consent will not be unreasonably withheld. Any TPO made with the necessary consent applies only to those who hold a private interest in the land and does not bind the Crown. Nevertheless, Government departments will normally consult the LPA before carrying out any work which would otherwise require consent, and take into consideration any comments the LPA wish to make.<sup>12</sup>

2.6 Crown immunity from the planning system will be removed when a suitable legislative opportunity arises. This will include removing the Crown's present immunity from TPO controls. Provision will be made, however, to ensure that Forest Enterprise, the operating arm of the Forestry Commission, are treated in the same way as private landowners who manage their woodlands in accordance with an approved plan of operations, and that Crown bodies continue to be able to meet their statutory obligations.

2.7 Although crown immunity was removed from health authorities in April 1991,<sup>13</sup> immunity may in fact continue to apply in relation to land which is vested in the Secretary of State for Health.<sup>14</sup> NHS Trusts do not themselves have any crown immunity but, again, where the freehold interest in the land is held by the Secretary of State, crown immunity may apply. Before making a TPO on NHS land, therefore, LPAs are advised to consult the appropriate health authority and seek their consent where necessary. Health authorities will not unreasonably withhold consent, nor seek to defer consent pending disposal of the land.

## The Forestry Commission's 'Interest' in Land

2.8 There are limitations to the making of TPOs on land in which the Forestry Commission have an 'interest'. The Act states that the Forestry Commission have an 'interest' in land if, in respect of it:

- (1) there is an existing forestry dedication covenant in force, or
- (2) they have made a grant or loan under section 1 of the Forestry Act 1979.<sup>15</sup>

If (1) or (2) applies the Forestry Commission must give their consent before a TPO may be made.

2.9 The main grants currently available from the Forestry Commission for the planting, restocking or management of woodlands are under the Woodland Grant Scheme. In running their schemes the Forestry Commission have proper regard for environmental and amenity considerations, and proposals are assessed by reference to the UK Forestry Standard, incorporating Forest Guidelines, Forest Practice Guides and other standards of good forestry practice.

2.10 The LPA and the Forestry Commission should, where appropriate, liaise closely. If the Forestry Commission wish to accept an area of land into the Woodland Grant Scheme and that land is already the subject of a TPO, they will consult the LPA. If that land is subsequently accepted into the Scheme any felling in accordance with an approved plan of operations or working plan would override the usual requirement to obtain the LPA's consent under the TPO.<sup>16</sup>

2.11 For their part, LPAs must consult the Forestry Commission (see [Annex 1](#)) before making a TPO on land in which the Commission have an 'interest', as defined in paragraph 2.8 above. If the LPA identify trees which they would have made subject to a TPO but for the Forestry Commission's 'interest' in the land, they may wish to consider asking the Commission to let them know when that 'interest' in the land is likely to cease.

## Local Authority Land

2.12 LPAs may make TPOs in respect of their own trees or trees under their control. Sometimes they acquire land which is already the subject of a TPO. If the LPA (ie any department of the Council as a whole and not just their planning department) propose to cut down or carry out work on protected trees, they may grant themselves consent (for more details see paragraphs [6.76-6.78](#)).<sup>17</sup> In the Secretary of State's view it would very rarely be appropriate for one LPA to make a TPO for trees on land owned by another LPA in their area. Where such a TPO exists the latter would generally have to make an application to the former before cutting down or carrying out work on the trees.

7 See *Bullock v Secretary of State for the Environment* (1980) 40 P&CR 246, where recently coppiced trees were held to be 'trees' under the Act: 'Bushes and scrub nobody I suppose would call 'trees', nor indeed shrubs, but it seems to me that anything which ordinarily one would call a tree is a 'tree' within ... the Act.' (Phillips J.)

8 A view accepted by the Court of Appeal in *Evans v Waverley BC* [1995] 3 PLR 80.

9 See section 97 of the Environment Act 1995 and the Hedgerows Regulations 1997 (SI 1997, No 1160). See also the Department's Guide, *The Hedgerows Regulations 1997: A Guide to the Law and Good Practice*.

10 'Crown land' is defined in section 293 of the Act. Church land is not Crown land.

11 See section 296(2)(a) of the Act.

12 See Part I of the memorandum to DOE Circular 18/84, paragraph 1012.

13 Under section 60 of the National Health Service and Community Care Act 1990.

14 On 1 April 1996, for example (under the Health Authorities Act 1995), regional health authority land was vested in the Secretary of State.

15 See section 200(2) of the Act.

16 See section 200(3) of the Act.

17 See regulation 17 of the 1999 Regulations, which amends the Town and Country Planning General Regulations 1992 (SI 1992, No 1492), bringing to an end the requirement for LPAs to apply to the Secretary of State for consent.