PURPOSE OF REPORT

To seek approval of proposed responses to a Scottish Government consultation paper on revisions to secondary legislation relating to Tree Preservation Orders (TPOs).

COMPETENCE

1.1 There are no legal, financial or other constraints to the recommendations being implemented.

SUMMARY

2.1 The regulations setting out the provisions for making Tree Preservation Orders (TPOs) are set out in secondary legislation, i.e. issued by Scottish Ministers rather than as main statute. The Regulations for TPOs has changed little since the first set of regulations were issued in 1975.

2.2 The changes now proposed and being consulted on, follow a review of the original regulations and proposals to update them. The proposals will form the basis of new Regulations governing the making of TPOs. The proposals are fairly minor in nature and will not significantly amend current procedures. The proposed revisions will have minor implications for the Comhairle in that the only existing TPO in Stornoway will have to be reviewed to comply with the regulations.

2.3 The views sought are set out in the form of a series of questions. These, along with the proposed responses, are detailed in Section 6 of this Report.

2.4 Responses are sought by 9 July 2010. The full consultation can be found at http://www.scotland.gov.uk/Publications/2010/04/16114715/0. A hard copy will be placed in the Members’ lounge prior to the meeting of the Committee on 8 June.

RECOMMENDATION

3.1 It is recommended that the Comhairle agree the proposed responses set out in Section 6 of this Report as the basis of the Comhairle’s observations on the Tree Preservation Orders Consultation Paper.
BACKGROUND – TPO REGULATIONS

4.1 The discretionary power for Local Planning Authorities to make Tree Preservation Orders (TPO) is contained in the main planning Act (The Planning etc. (Scotland) Act 2006). The means to implement those powers is set out in Regulations which are secondary legislation issued by the Scottish Ministers.

4.2 The Regulations give Planning Authorities powers to protect trees (singly or in groups) to prevent indiscriminate felling, topping, or lopping in the interests of the public amenity of the area. Any works to the trees must have the consent of the Planning Authority.

4.3 The only TPO in the Outer Hebrides is in Stornoway to the rear of Matheson Road. This Order was declared in 1976 and has not been reviewed since. Trees within designated Conservation Areas also have a similar degree of protection.

4.4 In 2002 the Scottish Government commissioned a research report to examine the Effectiveness of Tree Preservation Orders in Scotland. The report concluded that the system was basically sound and a series of fine-tunings would provide an up to date structure for protecting trees in Scotland. Subsequently Ministers issued a consultation paper in 2004 titled the Tree Preservation Orders Consultation Paper (2004) which proposed a number of legislative changes following consultations with stakeholders. The proposals now put forward are a synthesis of the proposals arising from these documents.

PROPOSED REVISIONS TO THE TPO REGULATIONS

5.1 The main changes proposed are:-

a) Updating the Regulations and the Model Order to reference the provisions contained in the Town & Country Planning (Scotland) Act 1997 and the Planning etc. (Scotland) Act 2006.

b) The Model Order will no longer be contained in the Regulations rather the Model Order will be guidance, with the contents of a TPO ultimately for the Planning Authority.

c) Introducing a new procedure where a TPO is not confirmed.

d) Introducing regulations for varying and revoking TPOs.

5.2 The Model Order – The Model Order, in the current Regulations, sets out the form and content which must be followed. Rather than bring forward a revised Model Order through new secondary legislation it is proposed to put it forward as guidance only, thus leaving the content of orders up to Planning Authorities.

5.3 Action where a TPO is not confirmed – There are currently no regulations which deal with such circumstances. New regulations are introduced to ensure consistency such as a requirement to endorse TPOs that have not been confirmed.

5.4 Varying/Revoking TPOs – The Planning etc. (Scotland) Act introduces a new duty on Planning Authorities to review existing TPOs in their areas. The review would determine whether existing Orders should be varied or revoked. There were no such procedures in the 1975 Regulations, though powers were given in the 1997 Town & Country Planning (Scotland) Act. These procedures are considered to be complex and time consuming. New procedures are now being incorporated in the Regulations.
The consultation paper also considers what actions should be taken in respect of specific proposals put forward in the 2004 consultation paper which included extending neighbour notification of a new TPO to owners/occupiers of neighbouring land in addition to all those included in the Order area.

CONSULTATION QUESTIONS AND PROPOSED RESPONSES

6.1 The Consultation paper sets out a series of questions on which Local Authorities are invited to respond. The questions and proposed responses are set out below:-

i) **Do you have any comment on the model order being contained within guidance rather than within the regulations?**  
Explanation – In the 1975 Regulations the Model Order was the template for TPOs. Rather than being a mandatory format it is now proposed that it be an example which can be modified by individual authorities.

*Suggested response – A problem that may arise from this is inconsistency between authorities and the potential for over elaboration of documents.*

ii) **Do you agree that neighbour notification should be at the discretion of the planning authority?**  
Explanation – It had been proposed that authorities be required to notify all adjoining owners when making a TPO. However, this has been found to be excessively bureaucratic in England. It is now suggested that it be discretionary only.

*Suggested response – Agree. Neighbour notification can be a time consuming process and these proposals only relate to post declaration of an order. Such neighbours will not have any additional rights to make representations for or against an order. Discretionary powers are seen as the most practical proposal.*

iii) **Do you support the requirement to notify any person who made representations of the planning authority's decision?**  
Explanation – Planning Authorities will be required to notify people making representations of the decision on a proposed TPO.

*Suggested response – Agree. This is an existing provision which is good practice. It mirrors current Development Management requirements.*

iv) **Do you support the proposed procedures where a TPO is not confirmed?**  
Explanation – Planning Authorities will be required to endorse proposed TPOs to the effect that they have not been confirmed.

*Suggested response – Agree. These are a sensible updating of the Regulations.*

v) **Do you agree with the proposed procedures for varying and revoking TPOs?**  
Explanation – These are new procedures which were missing from the original Regulations.

*Suggested Response – Agree. These are a sensible updating of the Regulations.*
vi) Do you agree with the principle of requiring an application for consent under a TPO where proposed development is either planning permission in principle or permitted development (other than statutory undertakers)?
Explanation – Where planning permission is given to develop a site and the proposal affects trees on the site which are the subject of a TPO there is no requirement to obtain separate consent under the TPO Regulations. In either case of applying for Permission in Principle or exercising permitted development rights this would allow tree operations whether or not they were strictly necessary to implement the development. This enables control to be exercised.

Suggested response – Agree. In both these cases trees could be lost/damaged because works to trees would not be controlled. It makes sense for this requirement to be brought in.

vii) Do you consider the model order should contain exemptions from compensation? - If so what exemptions should be included?
Explanation – In some instances owners of sites where a TPO is declared can claim compensation on potential loss of value of the land. The main current exemptions are where an authority considers that the protection and/or decision on proposed works are in the interests of good forestry or that the trees are of significant public amenity value.

Suggested response – The current Regulations provide for this on the basis that a TPO is made for the benefit of the wider public. There have been no suggestions that this should now be removed.

viii) Do you support the retention of the area classification within Schedule1?
Explanation – There has been no suggestion of removing this before. However, because the area designation can include large groups of trees it can include a wide range of tree sizes etc. which gives rise to problems with monitoring. It is suggested that the classification could be used in emergencies until more detailed survey work could be undertaken.

Suggested response – The retention of the area classification is useful where urgent action is required to protect trees, where a large group of trees is involved and detailed surveys, to meet the requirements of the other groupings, would not be practicable.

ix) Do you consider that Schedule 1 is sufficient for the identification of protected trees?
Explanation – The schedule sets out the descriptions and map location of the trees to be protected. The consultation invites open response for alternative means.

Suggested response – Schedule 1 has been sufficient to date. Whilst there may be more hi-tech means this should not be a priority for the protection of trees.

x) Do you consider that the appeals provisions contained within the model order are sufficient?
Explanation – The appeal provisions remain essentially the same as in the original regulations. The consultation invites an open response.

Suggested response – It is considered that the appeals provisions are adequate in relation to TPOs.
xi) Do you consider that the appeals provisions should restrict the matters that are raised at an appeal to those matters that were before the planning authority at the time of the decision? Explanation – The appeals provisions of the Regulations do not currently restrict the grounds on which a member of the public can appeal against a decision in respect of a TPO.

_Suggested response – Agree - it would be cumbersome to allow appeals to be heard on matters not considered at the time of decision. The recent revisions to the planning process are designed to make it more efficient: allowing appeals on wider considerations is likely to be counter productive._

xii) Do you consider that the proposed model order is easier to understand? Explanation – One of the aims of new guidance was to make the new Order easier to understand whilst still maintaining legal validity.

_Suggested response – It is a significant improvement._

xiii) Do you consider that any provisions or information requires to be added to the model order? Explanation – This is an open invitation to suggest further amendments to the Order.

_Suggested response – No._

xiv) Are there any potential impacts on business or voluntary sectors that we should be aware of in finalising the regulations and model order? Explanation – To assess the likely impact of the Regulations.

_Suggested response – None that the Comhairle is aware of._

xv) Are there any potential impacts on particular societal groups that we should be aware of in finalising the regulations or model order? Explanation – To assess the likely impact of the Regulations.

_Suggested response – None that the Comhairle is aware of._

xvi) Do you have any other comments to make on the draft regulations or model order?

_Suggested response – None._