

Tree Preservation Orders: What is a 'tree'?

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Section 65 of the Planning (Northern Ireland) Order 1991 permits the Department of the Environment to make a tree preservation order (TPO) in respect of, 'such trees, groups of trees or woodlands as may be specified in the order.' Where a TPO has been made on any such trees it is an offence to cut down or carry out any work on the trees without permission. The TPO can also require the replanting of trees or woodland which have been felled in the course of forestry operations or which have been felled unlawfully.

There is no statutory definition of a 'tree' for the purposes of the 1991 Order. Local planning authorities in England and Wales are granted similar powers to make TPOs under section 198 of the Town and Country Planning Act 1990 and likewise there is no statutory definition of a 'tree' for the purposes of this Act. However, the English High Court in the recent case of *Palm Developments Limited v Secretary of State for Communities and Local Government* have considered what a 'tree' is for the purposes of the 1990 Act. Cranston J in giving his judgement on 13 February 2009 stated that, 'with tree preservation orders there are no limitations in terms of size for what is to be treated as a tree. In other words, saplings are trees. Moreover, a tree preservation order for a woodland extends to all trees in the woodland, even if not in existence at the time the order is made.'

Whilst this case is of no binding authority in Northern Ireland our own High Court will often look to decisions of the English courts on environmental matters for guidance.

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