

## Legislation and grants

This document is intended to give a pointer to some key laws relating to trees - it does not give legal guidance. All attempts have been made to ensure that it is accurate but this cannot be guaranteed. It is essential that you consult someone with legal qualifications if you have any doubts or questions. No responsibility can be taken for any action carried out/not carried out on the basis of information given in this handout.

- Many different laws deal with trees.
- What you can/cannot do depends on the law and the situation. There are differences in the laws in England, Wales, Scotland and Northern Ireland.
- This sheet only highlights the main areas in England as of May 2019.

### Felling licence

To help protect Britain's trees and woodland, a felling licence from the Forestry Commission (or relevant devolved government body) is required to fell most trees.

- A licence is required for felling more than 5 cubic metres in any calendar quarter (e.g. January to March). A licence is not needed for felling less than this, provided no more than two cubic metres are sold.
- Exemptions include for location, size e.g. coppice and thinning, diseased trees and prevention of a danger. Details are available in the booklet [Tree felling - getting permission](#).
- Failing to obtain a licence can result in a fine of £2,500 or twice the value of the tree whichever is the greater
- See [www.forestry.gov.uk](http://www.forestry.gov.uk) for details
- The UK Forestry Standard (UKFS) 2017 is the reference standard for sustainable forest management across the UK, and applies to all woodland, <https://www.gov.uk/government/publications/the-uk-forestry-standard>

### Tree Preservation Order (TPO)

- Order made by local planning authority (LPA) to cover trees of amenity value, as individuals, groups, woodlands or trees within a specified area, which makes it an offence to cut down, top, lop, uproot, wilfully damage or destroy a tree protected by that order without the authority's permission.
- Exceptions include:
  - work to a tree which is urgently necessary because it presents an immediate risk of serious harm (but LPA must be notified as soon as practicable)
  - removal or work to a dead tree\* (but must give 5 working days' written notice)
  - removal of dead branches\*
  - Pruning trees cultivated for fruit
  - Prevent or control a legal nuisance
- Breaching legislation can lead to an unlimited fine if a tree is felled (£2,500 for other offences)

\* Tree owners, their agents and authorities should consider biodiversity. Dead trees and branches can provide very valuable habitats for plants and wildlife, which may also be protected under other legislation. To conserve biodiversity it can be good practice to retain dead wood on living trees and at least the lower trunk of dead 'ancient' or 'veteran' trees unless, for example, safety reasons justify removal. [Safety has priority](#), but safety considerations may not necessitate removal of all dead branches on living trees or the whole of a dead tree. It may be helpful to seek expert arboricultural and ecological advice, see also <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#dangerous-trees-and-branches>

## Conservation areas

- Areas designated by local authorities for special architectural or historic interest – the character and appearance of which it is desirable to preserve and enhance
- Trees may be covered by TPOs in which case you must comply with that legislation
- If the tree does not have a TPO you must give written notice of proposed work to the relevant Local Authority at least 6 weeks before work starts.
- No notice is required for a tree less than 7.5cm in diameter at 1.5m above ground.
- The main exceptions are the same as those for TPO
- <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>

## Churchyards

Trees in churchyards may have TPOs on them or be in conservation areas (see above).

It may also be necessary to consult the diocese and obtain consent (a faculty) before doing work.

## Occupier's liability Acts (note these are different in the various countries)

- The owner of the land on which a tree stands, together with any party who has control over the tree's management, owes a duty of care to all people who might be injured by the tree. The duty of care is to take reasonable care to avoid acts or omissions that might cause a reasonably foreseeable risk of injury to persons or property.
- Occupier (owner, tenant etc.) may be liable for harm or injury if a tree or part of it fails
- They must take 'reasonable care' to avoid acts which could reasonably be seen to result in injury or harm
- The person to whom the duty is owed includes all those that come within striking distance of trees (including on adjacent land) and may include trespassers.
- Tree owner is not required to guarantee that a tree is safe

## Health & Safety at Work Acts 1974 & 1999

- Employers must ensure (as far as reasonably practicable) that employees and members of public are not put at risk
- This probably includes the growing and management of trees as well as felling and lopping
- Employers must make suitable and sufficient assessment of risks (to those not employed) arising out of, or in connection with, the undertaking of the work. Thus, a risk assessment must be made of the tree stock
- For further information about the implications of the Occupier's liability Acts and the Health & Safety at Work Acts see publications by the National Tree Safety Group, for example 'Common sense risk management of trees' published by the Forestry Commission in 2011 ISBN: 978 0 8558 840 9.  
[www.ntsg.org.uk](http://www.ntsg.org.uk)

## Protected sites

Protection depends on the designation of the area

- Sites of Special Scientific Interest (or Areas of Special Scientific Interest in Northern Ireland) will have a list of operations requiring consent. Check to see which activities require consent from the Statutory Nature Conservation Organisation before they can be carried out.
- Under European Habitats Directive, sites that are protected (i.e. Special Areas of Conservation (SAC) and Special Protection Areas (SPAs)) are covered by the protected sites legislation for each country in addition to those protecting the SSSI.

## Protected species (especially bats)

The Wildlife & Countryside Act 1981 & Countryside & Rights of Way Act 2000 (CroW) confers the following protection:

### **Animals:**

- Prohibited to kill, injure, take or sell wild animals listed on various schedules.
- For some animals this includes damaging or destroying places that animals use for shelter, protection or breeding (for example bats).
- It is not an offence to help an animal if it is 'disabled' and taken for the purpose of tending it.

### **Birds:**

- Prohibited to kill, injure, take or sell any wild bird or their nests or eggs. Schedule 1 species are protected from disturbance as well.
- An authorised person (e.g. owner/occupier of land or person authorised by them) can kill common species listed on the schedule but have to apply for a licence first. Some birds have protection at all times, some for certain seasons.
- It is not an offence to help a bird if it is disabled and the intention is to tend to it.

### **Plants:**

- Forbidden to pick, uproot, destroy or sell plants listed on various schedules.
- Also, all plants unless done by owner or occupier.

European Protected Species (e.g. bats, dormouse etc.) are protected under the European Habitats Directive. This adds additional protection to that listed above, the wording of this piece of legislation is similar to that listed above but does have some differences.

## Scheduled Monuments

- Works proposed which might affect a Scheduled Monument (SM) must be discussed with the local authority archaeologist and/or Historic England (or country equivalent) before the work goes ahead.
- Underground, protected archaeological sites are prone to disturbance, so it is important when carrying out works near a SM not to disturb the ground
- Management to trees on SMs can be fully compatible with the needs of the monument. For example, reducing canopies to prevent trees failing.

## Protection from development under National Planning Policy Framework 2018

Para 175 If significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Paragraph 175 states that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional circumstances and a suitable compensation strategy exists.

Paragraph 194 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification and would be either exceptional or wholly exceptional, depending on the specific designation. This is relevant to ancient and veteran trees within these heritage assets.

### **Natural England and Forestry Commission guidance (known as ‘standing advice’)**

This applies to development proposals affecting ancient woodland, ancient trees and veteran trees. Standing advice is a ‘material planning consideration’. The advice states that:

‘Ancient and veteran trees can be individual trees or groups of trees within wood pastures, historic parkland, hedgerows, orchards, parks or other areas. They are often found outside ancient woodlands. They are irreplaceable habitats...’ it continues, ‘An ancient tree is exceptionally valuable. Attributes can include its: great age, size, condition, biodiversity value as a result of significant wood decay and the habitat created from the ageing process, cultural and heritage value.’

<https://www.gov.uk/guidance/ancient-woodland-and-veteran-trees-protection-surveys-licences>

### **Grants for working on veteran trees**

#### **Agri-environment scheme payment**

##### **Basic Payment Scheme (BPS)**

- Farmers are required to deduct tree canopy area from that which is eligible for payment.
- Where a parcel has scattered trees of more than 100 trees per hectare the whole parcel is ineligible for BPS.
- However, permanent grassland with fruit trees which yield repeated harvest do not fall under this system.

#### **Countryside Stewardship in England (different schemes apply in Wales, NI and Scotland)**

There are different levels of grants (mid-tier, higher tier) and not all the options listed below are available at all levels. Payment levels include:

- Protection of in-field trees on arable land (£420/ha) and in intensive grassland (£190/ha)
- Management of traditional orchards (£212/ha)
- Veteran tree surgery (£221/tree)
- Supplement for restorative pruning of fruit trees (£62/tree)
- Area payments for management of wood pasture & parkland (£46/ha), restoration of wood pasture & parkland (£244/ha) & creation of wood pasture & parkland (£409/ha)
- Planting parkland tree (£24.5/tree)
- Tree guards (£4-£170/tree depending on style)
- Creation of dead wood habitats on trees (£175/unit)

Work is currently being carried out on the successor to Countryside Stewardship, to be called ELMS (Environmental Land Management Schemes) which is proposed to be fully up and running by 2025, after various pilots.