

## **Tree Inspections and statute and common law applied to trees**

A Y/602/3958 LO 4

UNIT GUIDE 2023-24

### **4. Understand how aspects of statutory legislation apply to the protection of trees**

#### **LAW**

##### Preservation Orders for Trees

1.1 A local planning authority ('LPA') may issue a tree preservation order (referred to as a 'TPO') about trees or woods.

Without the LPA's permission, TPO is not allowed to: (1) chop down; (2) uproot; (3) top; (4) lop; (5) intentionally harm; or (6) intentionally destroy trees.

The Secretary of State believes that the LPA's approval is necessary for the cutting of roots since it has the potential to cause harm, even though it is not specifically mentioned in (1)(4) above.

1.2 The Town and Country Planning (Trees) Regulations 1999 (the "1999 Regulations") and Part VIII of the Town and Country Planning Act 1990 (the "Act") contain the legislation about TPOs. The 1999 Regulations went into effect on August 2, 1999.1.

The Planning and Compensation Act of 1991, which included four new parts (sections 214A, 214B, 214C, and 214D) and modified some of the TPO provisions of the 1990 Act, should be read in connection with the Act.

Section 197; the duty laid on the LPA to protect trees

Section 198; power to make TPOs and the exemptions

Section 201; Provisional orders

Section 206; tree replacement notice

Section 211; Conservation area notifications

##### Tree preservation orders

198. Power to make tree preservation orders.

199. Form of and procedure applicable to orders.

200. Orders affecting land where Forestry Commissioners are interested.

201. Provisional tree preservation orders

202. Power for Secretary of State to make tree preservation orders. Compensation for loss or damage caused by orders, etc.

203. Compensation in respect of tree preservation orders.

204. Compensation in respect of requirement as to replanting of trees.

205. Determination of compensation claims. Consequences of tree removal, etc.

206. Replacement of trees.

207. Enforcement of duties as to the replacement of trees.

208. Appeals against s. 207 notices.

209. Execution and cost of works required by s. 207 notice.

210. Penalties for non-compliance with a tree preservation order.

##### Trees in conservation areas

211. Preservation of trees in conservation areas.

212. Power to disapply s. 211.

213. Enforcement of controls concerning trees in conservation areas.

214. Registers of s. 211 notices.

##### Local Planning Authorities

1.4 The LPA has the authority to issue a TPO. The district, borough, or unitary council is known as the LPA in England.

A TPO may be made by the county council, but only if:

First, with relation to the granting of planning approval;

Second, on land that is not entirely under the jurisdiction of one district council;

Third, on territory in which the county council has an interest; or

Fourth, on land situated inside a National Park.

1.5 The following situations require special arrangements:

- (1) in National Parks, where the National Park Authority handles TPO duties in tandem with the district, borough, or unitary council; (3)
- (3) if the Enterprise Authority, Urban Development Corporation, or Housing Action Trust is the only LPA in Enterprise Zones, Urban Development Areas, and Housing Action Trust Areas.

1.6 The authority to create TPOs belongs to the Secretary of State for the Environment, Transport, and Regions (often known as "the Secretary of State"). The Secretary of State will take into consideration all representations made to him when evaluating requests to make a TPO, but, likely, he will only exercise his authority in extraordinary cases when concerns of a larger scope than local importance are brought up, and then only after conferring with the LPA whose territory the trees or woodlands are located.

### Trees and Woodlands

2.1 Woods and trees are safeguarded by TPOs. The Act does not define "trees" or restrict the use of TPOs to trees that meet a certain size requirement. For example, fruit trees could be included in a TPO if doing so would benefit the amenity (see paragraphs 6.17–6.19). According to the dictionary, a tree is a perennial plant that has a woody main stem that can sustain itself. It often grows to a significant height and size and develops woody branches at a distance from the ground. However, the High Court has ruled that, for the TPO statute, a "tree" means anything that one would typically refer to as a tree.

2.2 The word "woodland" is not defined by the Act either. According to the Secretary of State, the TPO also protects trees that are planted or developed organically inside the forest area after it is created.

This is so that the forest unit, which depends on regeneration or new planting, may be protected as a whole, which is the TPO's primary goal. However, as far as the TPO is concerned, only the removal of trees from their natural habitat or the execution of tree-related work is forbidden; the courts will have to determine whether seedlings, for example, qualify as "trees" under the Act depending on the specific facts of each case.

### Hedges

2.3 According to the Secretary of State, a TPO may be made to protect trees in hedges or an old hedge that has grown into a line of trees of an acceptable height and is not subject to hedgerow management. However, a TPO may only be used to preserve trees and cannot be used for bushes or shrubs. There is a separate law governing the removal of hedgerows.

### Crown Land

2.4 Only trees on Crown Land may be granted a TPO with the approval of the relevant authorities. The Crown Estate, or the government agency in charge of overseeing the land, will typically be the "appropriate authority" in these situations. If Crown land is transferred to a private interest, Section 300 of the Act provides unique provisions for the creation of TPOs; nevertheless, as before, prior approval from the relevant authority is necessary. When land ceases to be Crown land, a TPO imposed under Section 300 takes effect provisionally. However, it must first be confirmed by the LPA in the usual manner.

2.5 It is recommended that LPAs contact the person or office in charge of managing the relevant Crown land by phone before requesting permission to establish a TPO. The creation of TPOs on Crown land is acceptable in theory, and government departments' approval will not be denied arbitrarily. Any TPO created with the required approval is only binding on individuals with a private interest in the land; the Crown is not bound by it. However, before beginning any work that would ordinarily require permission, government departments will often consult the LPA and consider any feedback the LPA may have.

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, is treated in the same way as private landowners who manage their woodlands by 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, immunity may continue to apply to land that is vested in the Secretary of State for Health. 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 or seek to defer consent pending disposal of the land.

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

2.8 On territory in which the Forestry Commission has an "interest," the creation of TPOs is subject to restrictions. As per the Act, the Forestry Commission is deemed to have an 'interest' in the land if either (1) a forestry dedication covenant is now in effect or (2) the Commission has granted or lent money under Section 1 of the Forestry Act 1979. Before a TPO may be formed, the Forestry Commission must approve if any of the two conditions (1) or (2) are met.

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 has 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 When necessary, there should be tight coordination between the Forestry Commission and the LPA. The Forestry Commission will confer with the LPA before accepting any site that is already covered by a TPO into the Woodland Grant Scheme. Any felling carried out in compliance with a working plan or authorised plan of operations would take precedence over the customary obligation to secure the LPA's approval under the TPO if that land is later admitted into the scheme.

2.11 In turn, before granting a TPO on property in which the Forestry Commission has an "interest," as that term is defined in paragraph 2.8 above, LPAs are required to confer with the Commission. If the LPA finds trees that, but for the Forestry Commission's "interest" in the land, they would have subjected to a TPO, they might want to think about requesting that the Commission inform them when 'interest' in the land is expected to end.

#### Local Authority Land

2.12 For trees that they possess or have authority over, LPAs can make TPOs. On occasion, they purchase land that is already covered by a TPO. The LPA may give itself permission to remove or alter protected trees if any department of the Council, not simply the planning department, proposes to do so. It would be extremely rare, in the Secretary of State's opinion, for one LPA to make a TPO for trees on the property that another LPA in the region owns. Before chopping down or performing any work on the trees, the latter would typically have to apply to the former in cases where such a TPO exists.

According to government guidelines, the working definition specifies that it must be a woody perennial plant with a single stem. This could be a little shoot or a fully developed tree. It is interesting to note that this may, in certain cases, eliminate multi-stemmed trees like coppiced hazel, but it may also possibly include shrubs like lilac and elder that can grow to be as big as trees. It is arguable as to whether placing an order on a plant of that kind would be appropriate or enforceable.

#### 4.1. Identify what information is required when making an application to work on a protected tree

Please see the application form below.



Form031\_england\_en  
\_revised\_\_2\_HANDWO



Tree location Handsworth Public Park

**Case Study:**

Date: 13/04/2024 Location: Handsworth Public Park, Holly Rd, Handsworth, Birmingham B20 2BY





Handsworth Public Park

Target #

People walking on footpath / grass area

Within  $1.5 \times Ht$ —target is within striking distance if the trunk or root system of the tree fails and there are dead or brittle branches that could shatter and fly from the failed tree

Occupancy:

3. Frequent—the target zone is occupied for a large portion of the day or week

Not practical to move the target

Previous failure

The tree is in poor condition

Falling branches

Split in trunk section

$\frac{3}{4}$  hollow decay in trunk section

Wind exposure: partial

Overextended branch

Unbalanced crown

Vigor: low

(An assessment of overall tree health. Classify as low, normal, or high:

**Low**—tree is weak, growing slowly, and/or under stress.

**Normal**—tree has average Vigor for its species and the site conditions.

**High**—tree is growing well and appears to be free of significant health stress factors)

Recommendation:

Advance Level 3 inspection on the decay in the trunk section

Sonic Tomography required

Observing the overextended branch on the footpath

Level 3 inspection should be done within 3 month

Attention to the stormy weather is now required

#### 4.2. Identify the processes that Local Planning Authorities have in place when determining an application

You will need to apply form for consent to carry out work on a protected tree or trees in a conservation area on the Birmingham City Council website.

[https://www.birmingham.gov.uk/info/20184/tree\\_preservation/898/how\\_to\\_apply\\_for\\_tree\\_works\\_consent#:~:text=You%20will%20need%20to%20submit,done%20through%20the%20Planning%20Portal.](https://www.birmingham.gov.uk/info/20184/tree_preservation/898/how_to_apply_for_tree_works_consent#:~:text=You%20will%20need%20to%20submit,done%20through%20the%20Planning%20Portal.)

From there it goes to the Planning Portal where you need to make an account.

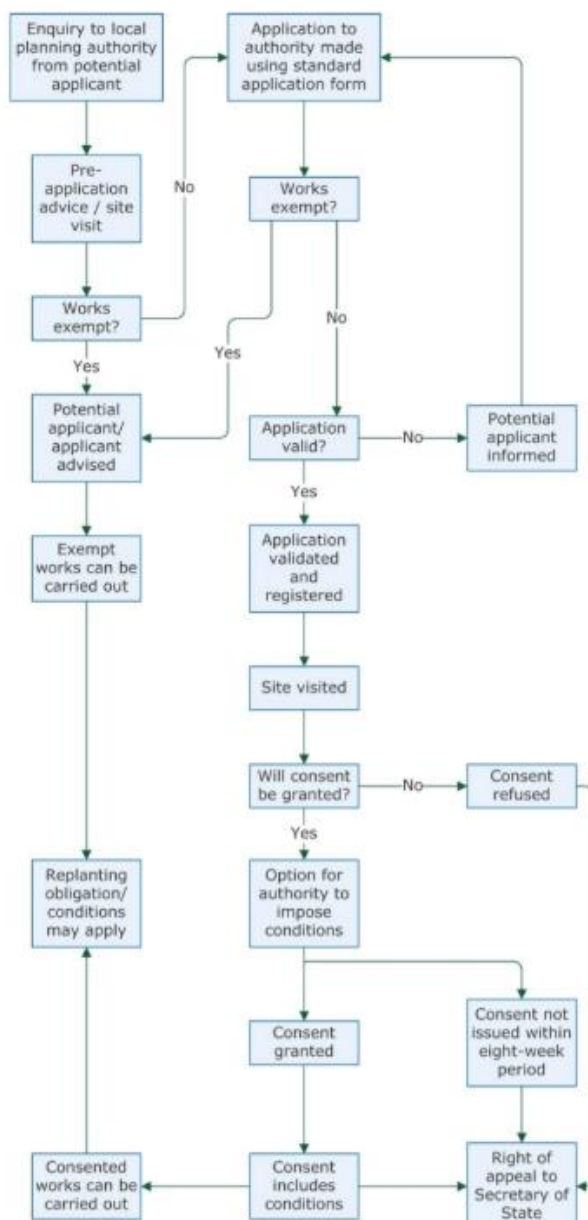
<https://www.planningportal.co.uk/app/applications>

The City Council is the Local Planning Authority and must follow the legislation when deciding if the application for works should be approved or not. An application for tree works in a conservation area must have a decision made within 6 weeks from receipt and for a TPO tree, it is 8 weeks.

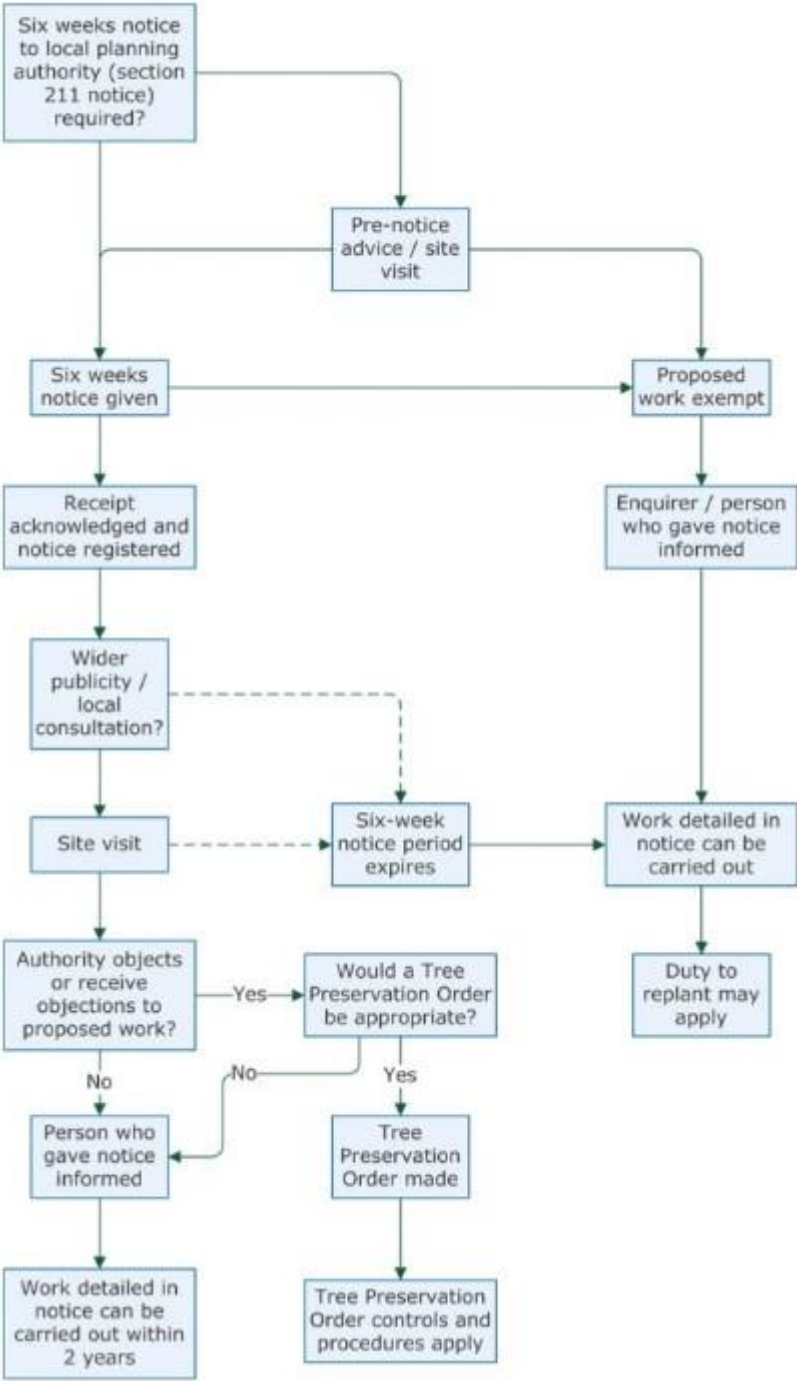
The authority may ask the applicant about their legal interest in the tree and consult the tree's owner. If the authority grants consent it will be for the applicant to get any necessary permission (for access to the land, for example) from the owner, before carrying out the work.

With a TPO the Council can refuse work or add conditions but in a Conservation Area the Council cannot add conditions or refuse the work; the only way the work could be stopped is to put a TPO on the tree. The Government has produced decision charts which are shown on the following pages:

**Flowchart 3: Applications to carry out work on trees protected by a Tree Preservation Order**



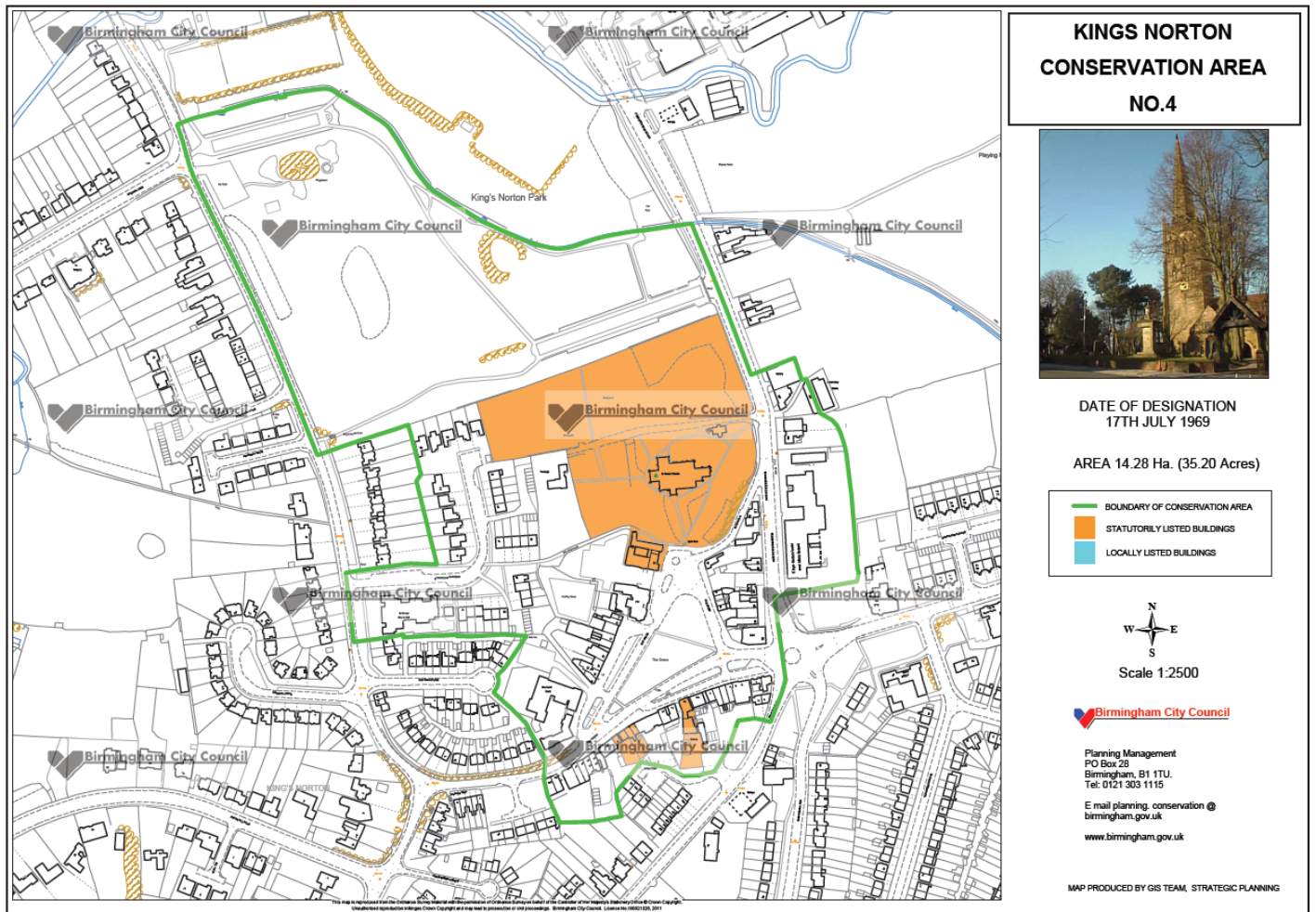
Flowchart 5: Notices for work to trees in a conservation area





#### 4.3. Identify the information required for carrying out works in a Conservation Area

I have chosen a tree in the Kings Norton conservation area which covers the churchyard/park.  
This is the map of the area:







My application was for crown clearing / thinning the horse chestnut to reduce the weight of the canopy as it is leaning over the pavement and ivy has been growing around the trunk area and climbing onto the lower branches.

This is the photo with the proposed work.



<https://www.doogal.co.uk/ShowMap?postcode=B30%203EU>



Kindly find attached the TPO application below.



Application  
Conservation Area fill

4.4. Identify a minimum of four exceptions for each of the following:

**A: Working on a tree with a TPO**

**B: Working on a tree in a Conservation Area**

**A: Working on a tree with a TPO**

Work can be done on a tree with a TPO without permission from the Council (LPA) in the following circumstances:

1. The tree becomes dangerous or is dead. For example, a tree that has suffered storm damage. The tree in the photo below had a TPO and had come down in the storm. Some roots were still intact but no permission would be needed to remove it.



Some roots still in ground so not exempt for being dead. Still completely within owners garden.

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<https://arbtalk.co.uk/forums/topic/112475-storm-felled-tree-with-tpo/>

2. To adhere to an Act of Parliament, the construction of a motorway or a new railway line typically requires legislative approval to facilitate the acquisition of the necessary land. Furthermore, any trees located on this land that are protected by a Tree Preservation Order (TPO) may be removed without the need for permission from the Council.
3. The tree is situated on Crown Land. According to section 293 of the Town and Country Planning Act 1990, Crown land is characterized as land that possesses a Crown interest or a Duchy interest

4. (gov.uk). The Duchies refer to those of Lancaster and Cornwall, while Crown interest encompasses land that is owned by the government, in addition to the private estates of the Queen.
5. The tree subject to the Tree Preservation Order (TPO) is located within a commercial orchard. According to the legal guidelines, it is stated that "If a fruit tree is safeguarded by a TPO and is being grown as part of a business operation, the Local Planning Authority's approval is not necessary for its removal or for any work performed on it, provided that such actions are beneficial to the business."

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/14956/tposguide.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/14956/tposguide.pdf)

## **B: Working on a tree in a Conservation Area**

Activities involving trees within a conservation area may proceed without obtaining permission from the Council (Local Planning Authority) under the following conditions:

1. The tree is deceased or has dead branches.
2. The tree poses a safety risk.
3. Actions are necessary to adhere to statutory requirements, such as those related to water, gas, or electrical services.
4. The tree has a diameter at breast height (dbh) of less than 7.5 cm.

### 4.5. Identify when a felling licence is Required / Not required

The Forestry Commission controls tree felling by issuing felling licences.

In certain instances, a felling licence may be necessary from the Forestry Commission. Applications for this licence can be submitted online at the following link:

<https://fellinglicenceonline.forestrycommission.gov.uk/portal/user/login>.

The guidance provided by the Forestry Commission indicates that if there is any uncertainty, it is advisable to consult them regarding the felling licence instead of proceeding with tree felling based on the assumption of applicable exemptions.

<b>Licence Required</b>	<b>Licence not required</b>
In any calendar quarter, you intend to fell more than 5m <sup>3</sup> of growing trees or sell more than 2m <sup>3</sup>	In any calendar quarter you may fell up to 5 cubic metres (m <sup>3</sup> ) of growing trees on your property without a felling licence, as long as no more than 2m <sup>3</sup> are sold.
	The trees are less than 8cm dbh at 1.3m
	The trees are fruit trees, in a public open space or in an inner London Borough
	The tree needs to be removed to prevent the spread of a disease and it has a Statutory Plant Health Notice
	The tree is on Crown Land

Source:

<https://www.legislation.gov.uk/uksi/2012/605/regulation/14/made>

<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#statutory-undertakers>

<https://assets.publishing.service.gov.uk/media/5a790b1d40f0b679c0a08161/tposguide.pdf>

<https://www.legislation.gov.uk/ukpga/1980/66/schedule/1>

<https://www.legislation.gov.uk/ukpga/1967/10/section/9>

<https://www.plymouth.gov.uk/view-weekly-list-tree-applications>

<https://www.legislation.gov.uk/ukpga/1967/10/contents>

<https://www.myselectlawn.com/blog/5-types-of-tree-pruning/>

<https://www.tcpa.org.uk/>

<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#Flowchart-3-Applications-to-work-on-trees>

[https://assets.publishing.service.gov.uk/media/64b54e2d0ea2cb000d15e3e5/FC\\_Tree\\_Felling\\_4\\_July\\_23\\_WEB.pdf](https://assets.publishing.service.gov.uk/media/64b54e2d0ea2cb000d15e3e5/FC_Tree_Felling_4_July_23_WEB.pdf)

<https://examchum.uk/landscape-architecture/exemptions-to-tpo-trees/#:~:text=There%20are%20a%20number%20of,urgent%20and%20serious%20safety%20risk>