

Species and Habitat Protection Project

Review of tree protection legislation



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Section 1

Introduction: why trees?

1.1 Introduction

From the rural parishes to the urban landscape of Town, everyday life for Jersey’s people and wildlife is both supported and enhanced by trees: key green infrastructure of the Island.

Trees will play an important role in helping us adapt to a warmer world: near rivers to help manage water quality and flood risk, and in our towns to provide shade.

There are multiple widely known benefits of trees. Trees improve air quality, capture carbon, they can be a home and provide links for wildlife, may be a source of food and materials for ourselves and pollinators, provide shade on a hot day, and will often be an aesthetically pleasing feature of the landscape.

The evidence for maintaining and protecting trees within a community is strong. Studies¹ have shown that people who live in areas with more trees are generally healthier, both physically and mentally. Green spaces promote a sense of community and facilitate social networking and inclusion in children and adolescents.

Knowing the many benefits that we derive from trees, it is logical that we should actively seek to protect, maintain and enhance Jersey’s current and future tree stock, and ensure that what is growing now can continue to thrive well into the future so that new generations of Islanders can also enjoy the same benefits.

1.2 Background

As part of Jersey’s Carbon Neutral Strategy, one of the key deliverables in tackling the climate emergency is to ensure resilience and adaptation of natural capital, through urgently strengthening environmental protection and investment in species and habitat protection.

In October 2021 the States Assembly voted to support the principle of amendment to the island’s planning law to extend the definition of ‘development’ to include works to trees.

¹ <https://www.arup.com/perspectives/publications/research/section/cities-alive-rethinking-green-infrastructure>

There is a need, therefore, to develop an appropriate and proportionate regulatory framework to ensure the protection of trees and their subsequent management. In light of this, the report has been instructed to propose changes in legislation for better tree protection and enforcement powers.

There is also a concern, at both a public and a political level, that too little is done to protect and manage the island’s existing tree stock and that it remains at risk in general, but specifically in association with development activity.

1.3 Document overview

This document represents a review of currently used legislation in relevant countries as well as Jersey and then provides a set of recommendations for legislative changes.

Section 2 is a summary the current protection and regulations affecting trees in Jersey, including a critical appraisal of the existing regulatory regime.

Section 3 presents a comparative analysis of tree protection and management legislation in other jurisdictions, setting out its relevance to Jersey, an analysis of the pros and cons of different approaches and assessing their potential applicability to Jersey as part of a new regulatory regime.

Section 4 introduces a series of recommendations for improving the tree protection and management legislation in Jersey.

Section 5 assesses the potential compatibilities and impacts of the proposals on the existing legal provisions.



Fig. 1: Cities Alive - Rethinking Green Infrastructure

Section 2

Jersey tree protection and legislation

2.1 Introduction

This section provides a summary of relevant current legislation and regulation of works to trees in Jersey. It also provides a critical appraisal to identify key strengths and areas for improvement.

Jersey has a planning system that is ‘plan-led’ which means that national and local planning policy is set out in formal development plans which describe what developments should and should not get planning permission, how land should be protected and seeks to ensure a balance between development and environmental protection in the public interest.

The report takes the Jersey’s particularities into account, especially when comparing to the UK legislation.

2.2 Current tree protection

2.2.1 Protected tree list¹

The Government of Jersey (GoJ) provides and maintains a list of trees that are protected. This list is comprised of trees based on high amenity value.

An explanation is given as to why trees are given protection:

- Trees are protected where they have high amenity value and where they make a valuable and important contribution to the local environment. Most often, trees are given protection when they are the subject of some type of threat, usually a development proposal.

An explanation is given as to how a tree is selected:

- A tree’s suitability for protection is judged on a number of criteria. To make a recommendation to protect a tree, an arborist is required to take into account the following factors:
 - the tree’s size
 - life expectancy
 - position (and the public enjoyment it provides)
 - the presence of other trees
 - its relation to its setting
 - its form and other special features, including:
 - if it is rare
 - if it is of exceptional landscape value
 - if it screens an unpleasant view
 - if it is important in a larger composition

It also provides what type of tree can be included in the list of protected trees, as well as notification process.

¹ <https://www.gov.je/citizen/Planning/Pages/ProtectedTrees.aspx>

Critical Appraisal

The protected tree list is easily accessible through the GoJ website. The accompanying search function allows for all users to search and view any tree that is on the list.

The information on the list of the tree is limited to a basic description of the tree that provides an approximate location. This provision of detail represents the minimum requirement of the Chief Officer in respect of the Planning and Building (Jersey) Law 2002². No detail on age, girth, height, its Latin name (species and genus) or condition is available.

The location is approximate and as such could lead to misinterpretation of its precise location.

However information relating as to why and how a tree is selected; and how it can be added to this list is provided in another section: Carrying out work on a protected tree.³

The list itself is very limited with only 66 entries. The list currently does not act as a single source of truth to determine whether any tree in Jersey has protected status.

The map view is available but appears to be incomplete with only 6 entries shown on the map.

In general it is considered that the List of Protected Trees is not a comprehensive list and that the onus therefore appears to be upon the landowner or developer to check with GoJ whether any protection exists before initiating any work that would damage or destroy the tree.

2 <https://www.jerseylaw.je/laws/current/Pages/22.550.aspx>
3 <https://www.gov.je/PlanningBuilding/TreesHedges/Pages/Work.aspx>

2.2.2 Natural site database⁴

The natural sites database contains the List of places that are of ecological, botanical, zoological and/or geological interest, known as Sites of Special Interest.

Critical Appraisal

The natural sites database is easily accessible through the GoJ website. The accompanying search function allows for all users to search and view any designated natural sites on the list and an associated plan that provides an approximate location.

The information on the natural site is supported through a detailed schedule listing our the relevance and importance for each site; i.e. relevant flora and fauna.

The list can be visually mapped onto the Island geography and which makes it easier to define exact boundaries.

2.2.3 Works to a tree⁵

The GoJ states that if a resident wants to remove or manage any trees they should check with teh Infrastructure, Housing and Environment (IHE) to make sure that they are not on the list of protected trees or protected by a planning condition before you carry out any work.

Critical Appraisal

The information regarding carrying out works on a protected tree is well laid out, easily accessible with relevant information (as noted in the critical appraisal in section 2.2.1). As such users can obtain all relevant information without the need to directly contact someone, however this approach to promote users to contact IHE if uncertain, is suitable.

The approach to undertaking works on protected trees, requires the user to submit an application. This is aligned with the best practice.

4 <https://www.gov.je/citizen/Planning/Pages/NaturalSites.aspx>
5 <https://www.gov.je/PlanningBuilding/TreesHedges/Pages/Work.aspx>

2.3 Current legislation

2.3.1 Planning and Building (Jersey) Law 2002⁶

This Law provides for general town and country planning and provides rules relative to development in Jersey. However, at present the current law under the meaning of ‘develop’ does not include the term tree.

The purpose of the Law is to conserve, protect and improve Jersey’s natural beauty, natural resources and general amenities, its character, and its physical and natural environments.

It provides for the protection of trees (under Part 6 - Chapter 2).

Works affecting trees are currently regulated in the island only where:

- Trees are added to the **list of protected trees** on the basis of their amenity value.
- Where they are the subject of a condition attached to the grant of **planning permission**.

Critical Appraisal

The law is purposed to conserve, protect and improve Jersey’s natural environments - which would include all trees and other vegetation. However the law only protects those trees identified on the list of protected trees, noted in a natural site or if they are subject of a condition attached to a planning permission. As such the law appears to fail to fully serve its intended purpose.

Through the stakeholder engagement process in the emerging Jersey Tree Strategy, it was stated that:

“Even with the requirement for a tree protection provision there are concerns about issues of enforcement and that if the government receives a planning application that involves felling trees on the list, the default seems to be to grant permission.”

6 <https://www.jerseylaw.je/laws/current/Pages/22.550.aspx>

2.3.2 Tree protection on the building site⁷

A planning advice note in the form of a Supplementary Planning Guidance (SPG)^{is} published by the GoJ provide advice on the inclusion of trees into the design, planning and development stage of any new build, to ensure the survival of trees on construction sites.

Critical Appraisal

The SPG is noted ‘to be reviewed’ - it is understood due to it not reflecting current Jersey Law practices. It is noted that the SPG refers to Tree Preservation Orders - these are not currently recognised in Jersey Law, with the ability to protect trees by Order repealed with the introduction of the Planning and Building (Jersey) Law 2002.

Notable is the recommendation that “A detailed survey and report on the condition of the existing trees and shrubs on the site is necessary before design work begins.” It is recommended that the guidance includes notes on who can do the survey and the report.

7 <https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/SPG-Advice%20Note%2014%20-%20Tree%20Protection%20on%20the%20building%20site%20-%20JAQ-TBR.pdf>

2.3.3 The Carbon Neutral Strategy⁸

The Carbon Neutral Strategy is the response to the Jersey’s declaration of a climate emergency.⁹ The strategy sets an aim for Jersey to be carbon-neutral by 2030. It recommends a package of measures to be put in place to urgently strengthen environmental protection systems and processes, including:

- Species and habitat protection. Extend protection of species and habitats, including trees. Better enforcement of building permits to protect biodiversity.
- On-Island sequestration scheme to plant 7,000 trees, including support for the first 5 years of maintenance. This will be done in partnership with Jersey Trees for Life.

The strategy proposed a Climate Emergency Fund, to be established with an initial allocation, in 2020, of £5 million from the Consolidated Fund. Of which, £0.50 million was attributed of urgent enhancements to environmental protection systems and processes in areas that are already impacted by, or help tackle, climate change including the control of invasive and non-native species; marine resources; and **protection of the island trees** and other carbon sinks. This money will also provide for additional support to ensure the Island Plan is fully responsive to the climate emergency in key areas, including an enhanced sustainability appraisal and key technical studies.

Critical Appraisal

Carbon sequestration is among many other benefits of having trees and despite it’s limited impact for Jersey, the combined benefits serve a multitude of goals set by the Strategy (biodiversity, active travel, reduction of cooling/heating, flood attenuation, soil quality, connection to nature, local material production in small scale).

⁸ <https://www.gov.je/SiteCollectionDocuments/Environment%20and%20greener%20living/CNS%20amended%20version%20FINAL.pdf>
⁹ <https://statesassembly.gov.je/AssemblyPropositions/2019/P.27-2019.pdf>

2.3.4 Government Plan 2021–2024 (P.130/2020): Twenty First Amendment¹⁰

The amendment lodged on the 1st December 2020 included a commitment to increase funding by £300,000 to fund tree preservation initiatives and a list of actions:

1. Develop an Island Tree Strategy
2. Start using Tree Preservation Orders
3. Enforcement of tree preservation legislation
4. Criteria determining protected status
5. Undertake an Island-wide Tree Survey
6. Public List of Protected Trees
7. Stakeholder engagement

Critical Appraisal

The commitment is aligned with priority plan and policies within the Bridging Island Plan. The momentum is building to change the tree protection to the better.

See section 4 where more thought is given to each of the actions on the list in relation to recommendations arising from this review.

¹⁰ [https://statesassembly.gov.je/assemblypropositions/2020/p.130-2020%20amd.\(21\).pdf](https://statesassembly.gov.je/assemblypropositions/2020/p.130-2020%20amd.(21).pdf)

2.3.5 Proposed changes to the legislation
Draft Jersey Tree Strategy

The emerging Jersey Tree Strategy is the result of a wide ranging stakeholder engagement spanning different knowledge, perspectives, and ideas to build an agreement.

The core discussions spanned two workshops and involved 44 people invited equally from: Biodiversity; Business & enterprise; Community; Development, Regulation & Legal; Environment; Farming; Heritage & Culture; Recreation, Health and Wellbeing; Tree management; and Utility Services.

Additionally, 323 people responded to online and paper engagement with the wider community totalling in 1,071 comments received.

The strategy sets out the combined vision for the future and proposes the following policy changes:

- Development must protect and improve existing green infrastructure assets, and contribute towards the delivery of new green infrastructure.
- Development within or near priority wildlife corridors will be required to protect and improve existing habitats.
- Trees that feature on the list of protected trees should be retained, unless exceptional circumstances.
- Introduction of conservation areas that cover preservation of trees.
- Opportunities to soften new built-up edges with additional tree and hedge planting.
- Opportunities for sequestration schemes without planning permission.

Critical Appraisal

The early draft version of this document was reviewed with final revised version being published in 2022.

The Strategy represents an enticing framework of thinking and incorporates the variety of voices and perspectives.

In the consecutive revisions it should focus on being clear about the tree protection measures and to provide easily identifiable and accessible to the public resources on tree works and maintenance.

2.3.6 Amendment no 8 to the Planning and Building (Jersey) Law 2002¹¹

The amendment will be debated in 2022. It proposes:

- the introduction of control over any felling, lopping, pruning and any alteration of **any tree**.
- the Law defines works to trees to be defined by Order, **which has yet to be drafted**, and an Appointed Day Act will ensure that this power will not come into effect until the subordinate legislation is in force.
- Relevant provisions in the draft Law in this regard are: **the inclusion of tree into the meaning of development** (Article 4(2)); the protection, and enhancement, of biodiversity as a condition of planning permission (Article 8)
- the inclusion of trees in the definition of development, which will also entail changes to relevant secondary legislation in due course.

Critical Appraisal

This is a welcome move which should be supported by other actions and changes as outlined above and elsewhere in this document.

The success of this amendment will depend on subsequent development of the Order and the secondary legislation changes.

¹¹ <https://statesassembly.gov.je/assemblypropositions/2021/p.76-2021.pdf>

2.3.7 The Planning and Building (Amendment No.6) (Jersey) Law 2014¹²

The removal and replacement of protected trees is covered under the Planning and Building (Jersey) Law 2002. In 2017 responsibility for the administration of the Planning and Building (Jersey) Law 2002, was transferred from the Minister to the Chief Officer.

The Chief Officer, through a decision-making protocol, has delegated the responsibilities for making decisions under the Law to officers of the department. Therefore, the approval of replacement trees is carried out at officer level, in accordance with the protocol.

Protected Trees are covered under articles 59 to 61.

- Article 59 Adding or removing a tree on the List of Protected Trees
- Article 60 Provisional listing of trees
- Article 61 Grant of permission to carry outworks to a Protected Tree.

For Article 59 officers must not add a tree to the List of Sites of Protected Trees if a representation has been received in accordance with Article 59.

In such circumstances consideration of the inclusion on the List must be made by the Chief Officer.

Critical Appraisal

The delegation of powers in relation to different articles can be confusing for implementation and in providing clarity to the public.

In addition, necessary changes to future policy framework due to the initiatives set out in the Government Plan 2021–2024 (P.130/2020): Twenty First Amendment (such as introduction of the Tree Protection Orders) may necessitate amendment in legislation, as above.

12 [https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/P%20CEO%20decision%20making%20proto-](https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/P%20CEO%20decision%20making%20protocol%2014.07.2017.pdf)
[col%2014.07.2017.pdf](https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/P%20CEO%20decision%20making%20protocol%2014.07.2017.pdf)

2.3.8 Jersey Branchage¹³

The branchage refers to the law¹⁴ which ensures that any vegetation growth that overhangs roads and footpaths is cut back.

The Visite du Branchage¹⁵ is a bi-annual check on compliance and applies to all public roads including main roads, by-roads and footpaths.

The duty to carry out the branchage is on the occupiers of properties, not on the owner.

The penalties for non-compliant vegetation are presented in the guidance with a clear scale.

Branchage Best Practice booklets¹⁶ are available and include actions to protect wildlife, habitats, planting and soil.

Critical Appraisal

The best guidance provided on the website is commendable for the clarity on protecting the trees, existing wildlife and creating healthier habitats.

13 <https://www.gov.je/Home/Parish/pages/branchage.aspx>
14 <https://www.jerseylaw.je/laws/current/Pages/25.950.aspx>
15 <https://parish.gov.je/Pages/Roads.aspx#branchage>
16 <https://parish.gov.je/Documents/branchage%20booklet%20No%201%20A5%20ENGLISH%208pages.pdf>

2.3.9 High Hedges (Jersey) Law 2008¹⁷

The law allows to make complaints of hedges on land owned by someone else affect the person making a complaint.

High hedge definition is included as “a barrier to light that is formed wholly or predominantly by a line of 2 or more evergreens; and more than 2 metres high.”

The High hedges complaints webpage¹⁸ includes a guidance to the process, forms and fees (£164 in 2021¹⁹) with references to Jersey resources as well as UK resources on hedges.

Critical Appraisal

Clear definition of a high hedge to only include evergreens that form a barrier to light allows for a reasonable amount of exclusions.

Clarity on a fee and a digital form provided is ensuring an easier process for the public and reduction of misinterpreted complaints.

17 <https://www.jerseylaw.je/laws/current/Pages/22.200.aspx>
18 <https://www.gov.je/PlanningBuilding/TreesHedges/Pages/Control.aspx>
19 <https://www.gov.je/PlanningBuilding/MakingApplication/Planning/Pages/FormsFees.aspx>

2.3.10 Approved scheme for certifiable building works²⁰

It is suggested that the Approved Schemes For Certifiable Building Works (2019 Edition) should include the arborists and works on trees. An outline of this scheme is provided below:

The current Jersey system has a number of professionals (competent persons) who can undertake works under Bye-law 15 of the Building Bye-laws (Jersey) 2007²¹.

Competent person schemes currently includes a variety of building works including electrical, heating, windows works among others.

Work carried out under an approved competent person scheme is exempt from the requirement to make an application for building permission, provided that the work is notified to the department within 30 days of completion of the work.

The works notification system operated by the approved scheme provider must be used for this purpose.

Critical Appraisal

The scheme, clearly provides the Typology of works and the required competency of the person who can carry out the work.

The inclusion of arborists in this scheme would provide an assurance that the works to trees are undertaken by a competent person.

The problem with below is that trees are living - stating that works could be undertaken by a competent person needs to be taking into account specific arboricultural needs, similar to ARB approved contractor in the UK, which has one member in Jersey.

20 <https://www.gov.je/PlanningBuilding/MakingApplication/Building/Pages/ApprovedBuildingSchemes.aspx>
21 <https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/ID-2007%20Bye-laws2014%20Approved%20Schemes%20201401002%20mm.pdf>

Section 3

Best Practice Review

3.1 Introduction

This section provides a comparative review and analysis of relevant current legislation (and policy) in relation to tree protection and management from other jurisdictions. These jurisdictions were selected due to their potential relevance to Jersey and recognition of emerging best practice. The jurisdictions reviewed are listed as below:

- England
- Scotland
- The Isle of Man
- Guernsey
- Alderney
- France
- Germany
- Poland

The comparative analysis of each jurisdiction provides an overview of its approach to tree protection and management, in respect of:

- How is a tree defined?
- What trees are protected?
- Where are they protected?
- How a tree is protected?
- Exemptions to protection
- How works to trees are undertaken (and by whom)

A jurisdiction analysis also provides a key summary, comment and initial recommendations, in respect of the legislation and/or policy review that could be considered in the development of the future Jersey Legislation.

3.2 England

This sections is a review of the current legislation and policy of tree protection in England.

Relevance to Jersey.

England has a similar climate, species and is facing issues that are familiar to Jersey in relation to deforestation, climate change and population growth.

How is a tree defined?

There is no legal definition of a tree. Protection could apply to a tree of any size or species including saplings.

What trees are protected?

Their are several different forms of protection afforded to trees.

- Tree Preservation Orders (TPOs)¹ protect single trees, groups of trees or areas of woodland. They are made by Local Planning Authorities (LPA) to prohibit the cutting down, uprooting, topping, lopping, wilful damage or destruction of trees without the authority’s consent.
- Trees referred to in Planning Conditions. Planning permission for new developments may come with conditions that certain trees are to be retained.
- Trees (live, dead or uprooted) that contain species protected under the Wildlife and Countryside Act 1981². Certain species and their associated habitats are legally protected under this Act.
- There is a number of protected areas with blanket tree protection, see below.

Where are trees protected?

Environment Act 2021

Environment Act 2021: The Environment Act was passed into law in November 2021.³

It includes, among other articles:

- creation of a new, independent Office for Environmental Protection (OEP) which will hold government and public bodies to account on their environmental obligations;

- ‘biodiversity net gain’ as a condition of planning permission in England, seeking to ensure developments deliver at least 10% improvement in biodiversity value, ideally on-site;
- the introduction of ‘conservation covenants’: legally binding agreements between a landowner and a designated ‘responsible body’ to conserve aspects of the land;
- a legal target to halt wildlife decline by 2030.
- local highway authorities must consult members of the public before felling a tree on an urban road (with exemptions)

Trees in areas of protected wildlife

- Trees that are located within a protected areas (e.g. Site of Special Scientific Interest (SSSI), Ancient woodlands and others) will require permission from Natural England or Forestry Commission for any works to trees within or adjacent to such areas.⁴
- Trees located within or adjacent to a Scheduled Ancient Monument.⁵

Trees on council land

Trees on Local Planning Authority (LPA) and Highways Authority land are protected. This includes trees on highways, footpaths, verges, and trees in parks and on council estates.

Any works within these areas should be agreed in advance with the LPA and undertaken by an LPA approved tree-maintenance ccontractors.

Conservation areas

The Town and Country Planning Act 1990⁶ protects trees within Conservation Areas that are not already subject to TPO protection. All trees in conservation areas are protected if they have a stem of more than 7.5cm wide and stand more than 1.5 metres high.

Planning conditions

Section 197 of the Town and Country Planning Act (TCPA) 1990 places a duty on local planning authorities to make provision for the preservation or planting of trees.

The National Planning Policy Framework (NPPF)⁷ sets out the Government’s planning policies

for England. It states that planning policies and decisions should contribute to and enhance the natural environment by recognising the intrinsic character and beauty of the natural environment, and the wider benefits from natural capital and ecosystem services. Specifically, the NPPF provides for the protection of irreplaceable habitats such as ancient woodlands and veteran trees, stating that development resulting in the loss or deterioration of irreplaceable habitats should be refused.

Tree strategies

A large number of UK councils have adopted tree strategies with tree protection policies clearly set out. For example, Reading council has set up targets for planting new trees as well as protecting private trees.⁸

How does a tree become protected?

- The Town and Country Planning (Tree Preservation) (England) Regulations 2012⁹ enables local authorities to make a Tree Preservation Order to protect specific trees, groups of trees or woodlands in the interests of amenity;
- The Planning (Listed Buildings and Conservation Areas) Act 1990 enables local authorities to designate Conservation Areas (CAs) of special architectural or historical merit.

Exemptions?

- Generally very small trees (under 7.5-8cm in diameter measured at 1.3-1.5m) are except;
- Trees which are dead or posing danger in spreading disease to other trees;
- Trees that pose a danger to the public;
- Trees causing obstruction under Equality Act 2010
- Statutory undertakers (e.g. electricity, gas, telecoms) have certain exemptions allowing them to carry out works for their statutory function.

Who can do works on a tree?

In order to work on a tree in a conservation area, one must apply for planning permission at least six weeks before you plan to complete the work. TPOs can be issued as a result of submitted planning permission.

Arboricultural Association has been running the Arboricultural Approved Contractor Scheme which allows for finding a qualified professionals. However, depending on type of works and level of protection, licensing or qualification might not be required.

Summary

Pros: TPOs provide a way to flexibly protect trees; Conservation areas provide ability to defined increased protection regime.

Cons: there are concerns that given the land prices, the developers might still prefer removing trees; trees protection varies from authority to authority and the complexity of governing bodies is a burden for care.

The terminology used in the NPPF ‘retained wherever possible’ provides an open door to support arguments to fell existing trees - when greater investment in design could often retain.

References:

1. Tree Preservation Orders and trees in conservation areas <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>
2. Wildlife and Countryside Act 1981 <https://www.legislation.gov.uk/ukpga/1981/69/contents>
3. Environment Act 2021 <https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted>
4. Guidance: Construction near protected areas and wildlife <https://www.gov.uk/guidance/construction-near-protected-areas-and-wildlife>
5. Historic England Scheduled Monuments <https://historicengland.org.uk/listing/what-is-designation/scheduled-monuments/>
6. Town and Country Planning Act 1990 <https://www.legislation.gov.uk/ukpga/1990/8/contents>
7. National Planning Policy Framework https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf
8. Reading Tree Strategy <https://democracy.reading.gov.uk/documents/s10718/Appendix%20%20Tree%20Strategy%20March%202020.pdf>
9. The Town and Country Planning (Tree Preservation) (England) Regulations 2012 <https://www.legislation.gov.uk/uksi/2012/605/made>

3.3 Scotland

This sections is a review of the current legislation and policy of tree protection in Scotland.

Relevance to Jersey.

Scotland is part of the UK and has ambitious environmental goals. It has a number of same native species as Jersey. Additionally, Scotland has high levels of private forest ownership with 55% of private forests owned by private landowners.¹

How is a tree defined?

No legal definition of a tree is included in the legislation. Hedge legislation has a definition of a high hedge.²

What trees are protected?

- Town and Country Planning(Scotland) Act 1997³
 - Requires planning authorities to produce a forestry and woodland strategy. The strategies are to cover the protection and enhancement of woodlands, specifically those of high nature conservation value. Forestry and woodland strategies are statutory in Scotland^{4,5};
 - Places a duty on planning authorities to ensure that planning permissions make adequate provision for the preservation/planting of trees;
 - Gives a planning authority powers to issue TPOs. Compensation provisions are included in respect of TPOs and to replanting of trees in certain cases.
- Trees (live, dead or uprooted) that contain species protected under the Wildlife and Countryside Act 1981⁶ are under protection as well.

Where are trees protected?

In addition to the above, Scotland’s Nature agency has dedicated protected areas e.g. Sites of Special Scientific Interest (SSSI). The agency includes map and information on the level of protection allowed and can issue conservation orders.⁷

How does a tree become protected?

Local authorities make provision for tree protection via TPOs, planning conditions or designating conservation areas.

Exemptions?

Annex A Model form of Tree Preservation Order includes suggested exemptions as set out by the Scottish Government Policy on TPOs.⁸

Who can do works on a tree?

For tree works that fall under TPO protection or planning condition, following is given:

- Tree work should be carried out by trained, competent and appropriately insured arborists.
- The Planning Authority will usually require the work to comply with BS 3998 Recommendations for Tree Work

Other types of work might not fall under any conditions and can be undertaken by a competent person with the owner’s permission.

Summary

Pros: Scotland takes a balanced approach by taking a good practice from other parts of the UK and tweaking it to serve its own local needs.


Cons: Scottish legislation includes concessions to the timber industry which isn’t applicable to Jersey.

References:

1. <https://www.thenational.scot/news/19368878.revealed-radical-vision-make-scotland-woodland-nation/>
2. High Hedges (Scotland) Act 2013 <https://www.legislation.gov.uk/asp/2013/6/contents>
3. Town and Country Planning (Scotland) Act 1997 <https://www.legislation.gov.uk/ukpga/1997/8/contents>
4. Scotland’s Forestry Strategy 2019–2029 <https://www.gov.scot/publications/scotlands-forestry-strategy-20192029/>
5. Forestry and Woodland Strategy for the Glasgow City Region http://www.glasgowcityregion.co.uk/wp-content/uploads/2021/04/Clydeplan_Forestry_and_Woodland_Strategy_2020_NEW_COVER.pdf
6. Wildlife and Countryside Act 1981 <https://www.legislation.gov.uk/ukpga/1981/69/contents>
7. Scotland’s Nature Agency Protected areas <https://www.nature.scot/professional-advice/protected-areas-and-species/protected-areas>
8. Scottish Planning Series: Planning Circular 1 2011: Tree Preservation Orders <https://www.gov.scot/publications/scottish-planning-series-planning-circular-1-2011-tree-preservation-orders/pages/12/>

If you would like to do works to a tree, first check if the tree is protected by a Tree Preservation Order - TPO or in a conservation area.

Our interactive map shows details of TPOs and conservation areas. Click on the points on the map for details.

If you are using a tablet or smartphone please use the [mobile friendly version of the map](#) .

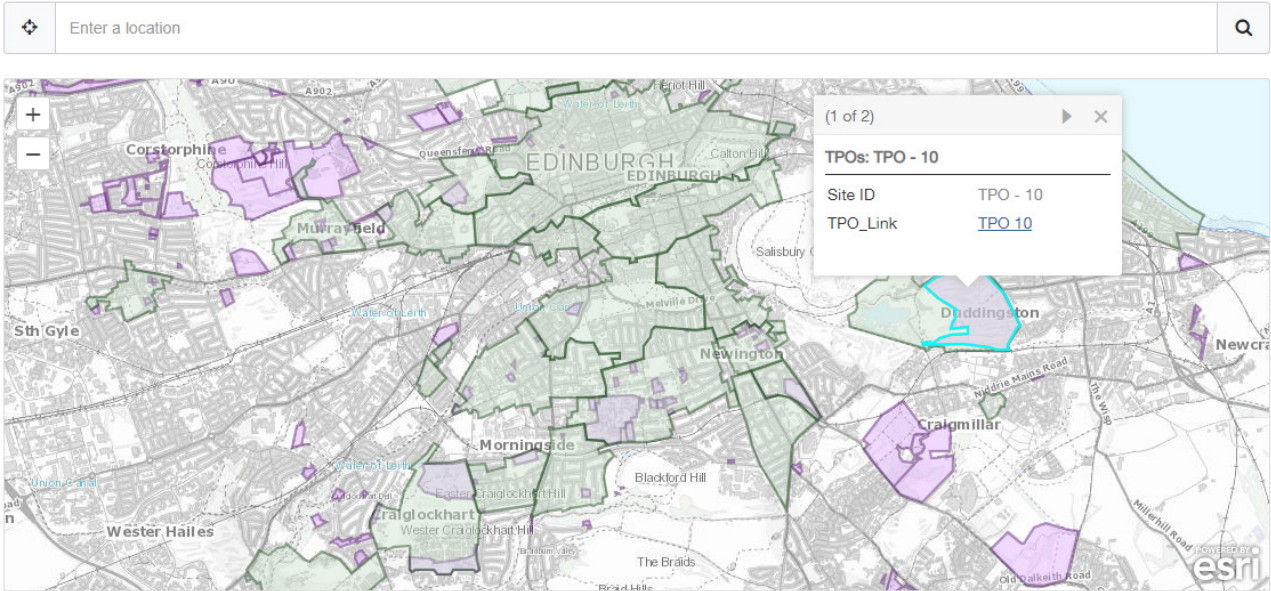


Fig.2: Web map showing Conservation Areas and TPOs in Edinburgh

MAP OF TREES

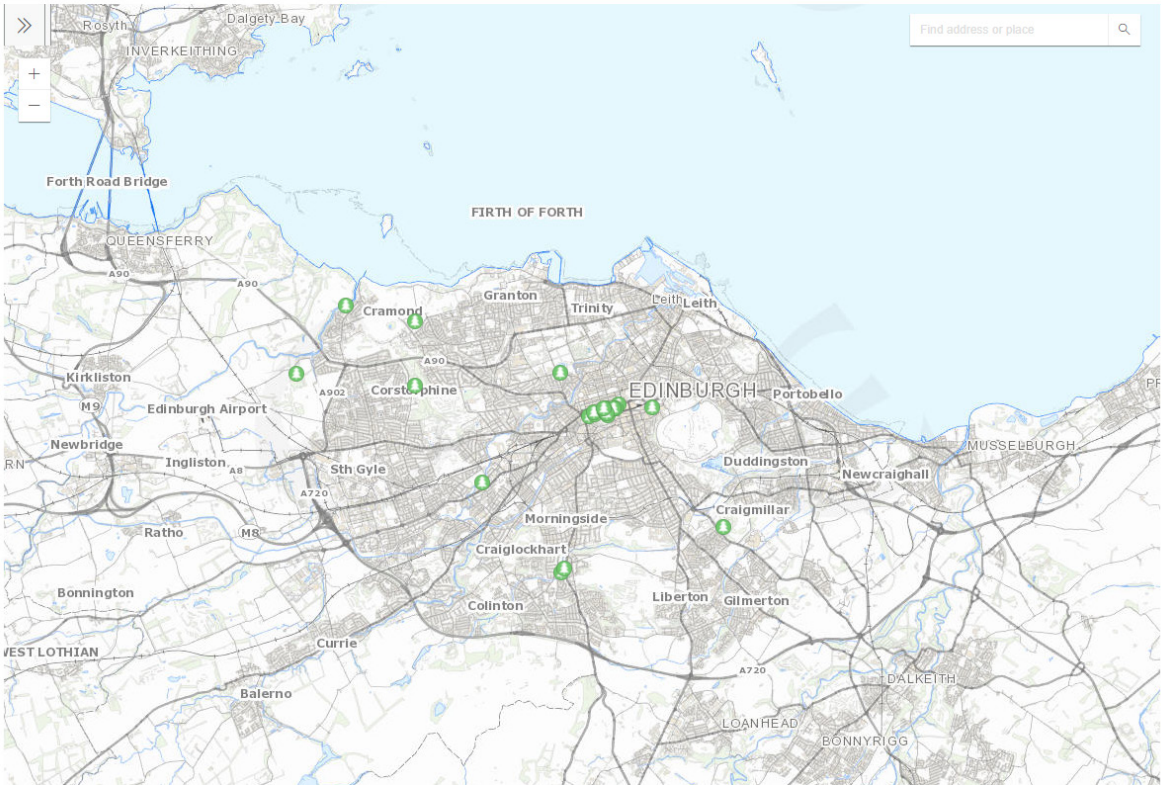


Fig.3: Web map showing Heritage Trees in Edinburgh

3.4 Isle of Man

This sections is a review of the current legislation and policy of tree protection in the Isle of Man.

Relevance to Jersey.

The Isle of Man is of similar scale to Jersey and is a Crown Dependency. Its trees and woodlands were subject to similar effects of human habitation and deforestation. The Isle of Man’s northern location means it has a different climate and a number of different native species of trees to that of Jersey.

How is a tree defined?

The Department of Environment, Food and Agriculture (DEFA) considers a ‘tree’ to be a woody perennial plant, typically (in its natural form) having a stem or trunk which can attain a height of 6m or more, and bearing lateral branches at some distance from the ground. The government also provides a list of species and genera that the Department considers not to be trees.¹

What trees are protected?

Trees in the Isle of Man are protected under The Tree Preservation Act 1993.² DEFA administers the Act and the Tree Protection Policy describes the fulfilment of its duties.

This legislation provides 2 levels of protection to the Island’s trees:

Level 1. All trees over 8cm diameter (equivalent circumference, 25cm) at 1.5m above ground level are automatically protected and a license is needed before felling or uprooting.

Level 2. Any trees with significant amenity value and are entered in the tree register³, and no work at all can take place to these trees without written approval.

Where are trees protected?

Across the entire island.

How does a tree become protected?

- The Department of Environment, Food and Agriculture enters a tree or a woodland into the register.
- If a tree is on a development site, planning application process outlines the requirements for tree protection.

- Important habitats for wildlife, such as nesting birds and roosting bats are protected under the Wildlife Act (1990).⁵

Exemptions?

- Branches can be removed or pruned without license on Level 1 trees as long as this doesn’t damage the tree health.
- Fruit trees within gardens and dead trees do not require a felling licence to be removed or pruned.

Who can do works on a tree?

- Any owner can work on trees not Level 1 or 2.
- For Level 2 trees (Registered Trees), license can be obtained from the Government by the owner.
- It is recommended that tree work is undertaken by competent arborists. Accredited Contractors webpage has a list of professionals.⁷

Summary

Pros: The strength of the protection is high - achieved through a blanket level of protection (provided under level 1). The tree policy guidance includes clear and practical details on tree works, assessment flowcharts and diagrams.⁸

Cons: Registered trees map is not developed to show individual trees and can be confusing.

References:

1. Isle of Man Tree Protection <https://www.gov.im/categories/home-and-neighbourhood/tree-protection/>
2. Tree Preservation Act 1993 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1993/1993-0006/TreePreservationAct1993_3.pdf
3. Isle of Man Tree protection policy https://www.gov.im/media/1371724/tree_protection_policy-_v19.pdf
4. Tree Felling and the Law leaflet <https://www.gov.im/media/1359586/tree-felling-and-the-law-leaflet.pdf>
5. Wildlife Act (1990) https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1990/1990-0002/WildlifeAct1990_4.pdf
6. Registered Trees Online Map <https://manngis.maps.arcgis.com/apps/webappviewer/index.html?id=2774436daaac4f82ad5bfc40742da71b>
7. <https://www.gov.im/categories/home-and-neighbourhood/tree-protection/accredited-tree-work-contractors/>
8. <https://www.gov.im/media/1363433/2018-tree-pruning-leaflet.pdf>

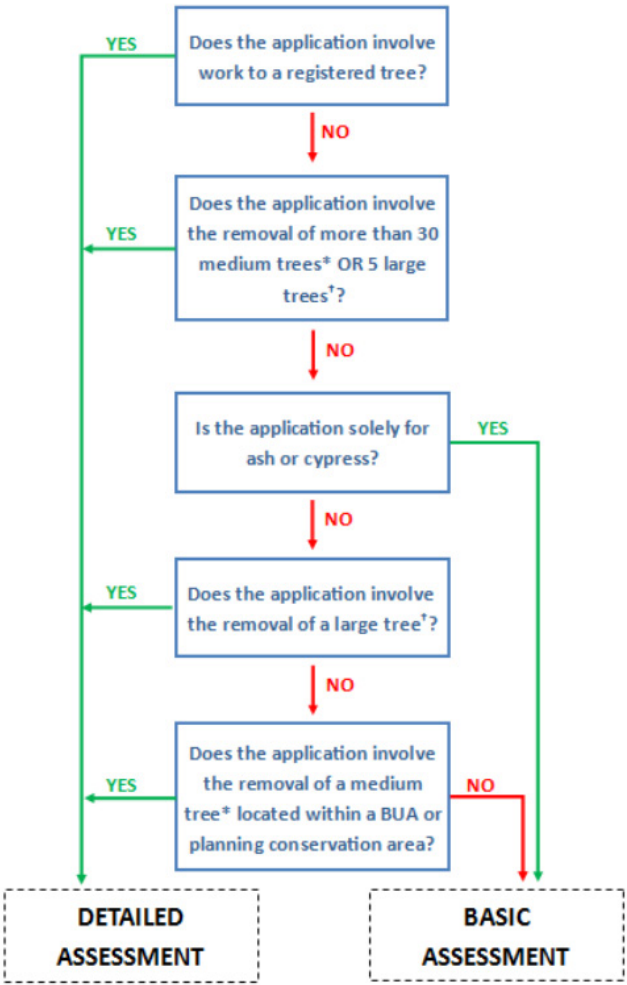


Fig.4: Isle of Man flowchart for tree assessment needs

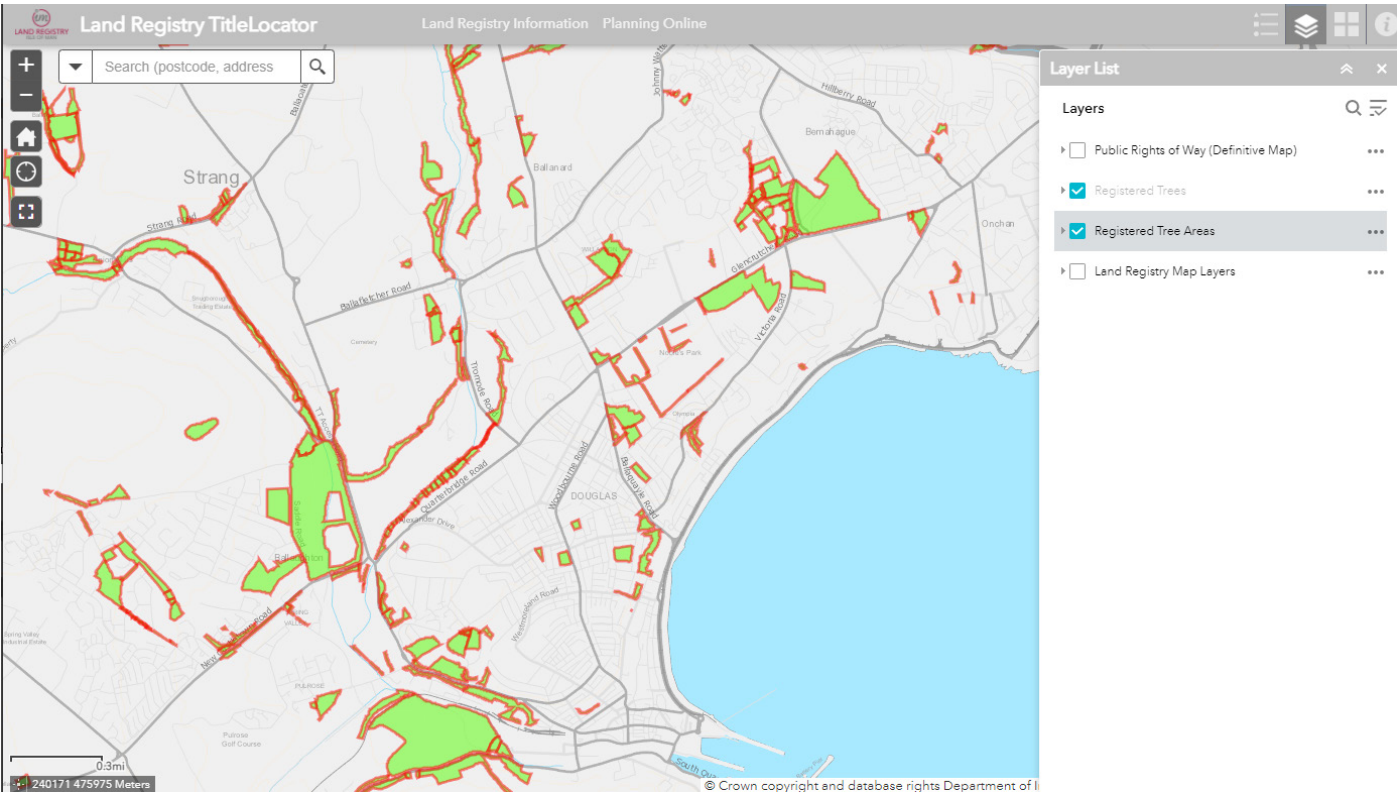


Fig.5: Isle of Man online map showing registered tree areas

3.5 Guernsey

This sections is a review of the current legislation and policy of tree protection in Guernsey.

Relevance to Jersey.

Guernsey is Jersey’s closest neighbour, is of a similar scale to Jersey and is a Crown Dependency. It shares a similar climate and set of native species of trees to that of Jersey.

How is a tree defined?

Only “protected tree” definition is included⁴; “protected tree” means any tree, group or area of trees or woodlands in relation to which a tree protection order has been made,

What trees are protected?

Protection of trees by way of Tree Protection Orders (TPOs) came into force in 2009 with the enactment of the 2005 Land Planning and Development Law¹.

Where are trees protected?

TPOs are made by the Development and Planning Authority to protect trees, groups of trees or areas with trees of amenity value².

The Protected Trees, Buildings & Monuments Webmap³ shows the extents of existing TPOs.

How does a tree become protected?

Tree Protection Order⁴

The selection of trees for the making of a TPO requires trees and woodlands to be assessed for their amenity value. An Amenity Assessment can be made by an Officer of the Planning Service, or any other person authorised by the Authority. Considerations, among others, include:

- Visibility;
- Individual impact;
- Wider impact; and
- Biodiversity and Ecology.

Trees Subject to a Condition on a Planning Application

Existing and newly planted trees may be protected by a condition on a planning application.

Tree(s) within Sites of Special Significance (SSS).

Planning permission is needed to top, lop or fell a trees within a SSS where that trees contribute to its special interest. These areas are shown on the Proposals Map of the Island Development Plan.

Exemptions?

- Routine tree management
- TPOs do not cover hedges, bushes or shrubs.
- To comply with hedge cutting legislation;
- Causing a nuisance (as specified in class 7, section 3(b) of the Land Planning and Development (Exemptions) Ordinance, 2007)⁵;
- Obstructing a highway or operation of the airport;
- Causing damage to a building or structure;
- a Cypress tree, other than an individually identified tree.

Who can do works on a tree?

Planning permission will need to be obtained to carry out any activity that relates to trees protected by TPOs.

If planning permission is granted, the tree work will need to be carried out to a high level (at least British Standard Specification 3998/1989).

Summary

Pros: the level of protection offered by TPOs allows for strong, flexible and evolving tree protection; Webmap is a helpful tool that is available to the public to locate TPOs and plan developments.

Cons: A public concern was noted that the fines are not clearly defined and should be prescribed higher.⁴

References:

1. Land Planning and Development (Guernsey) Law, 2005 <https://www.gov.gg/CHttpHandler.ashx?id=3436&p=0>
2. AN4 Protected Trees A guide to tree protection procedures <https://www.gov.gg/CHttpHandler.ashx?id=75546&p=0>
3. Protected Trees, Buildings & Monuments Webmap <http://digimap.protected.gov.gg/>
4. TPOs in Guernsey consultation report <https://www.gov.gg/CHttpHandler.ashx?id=136119&p=0>
5. Land Planning and Development (Exemptions) Ordinance, 2007 <https://www.gov.gg/CHttpHandler.ashx?id=147233&p=0>

2.1. The key stages and actions for protecting trees are summarised in the below diagram and explained in the following pages.

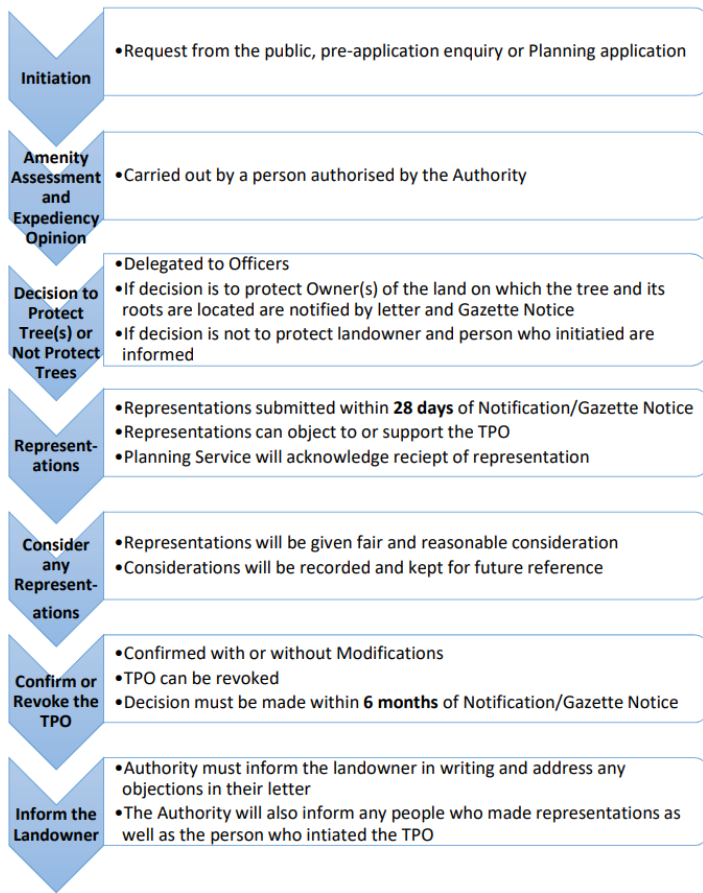


Fig. 6: Guernsey key stages for protecting trees

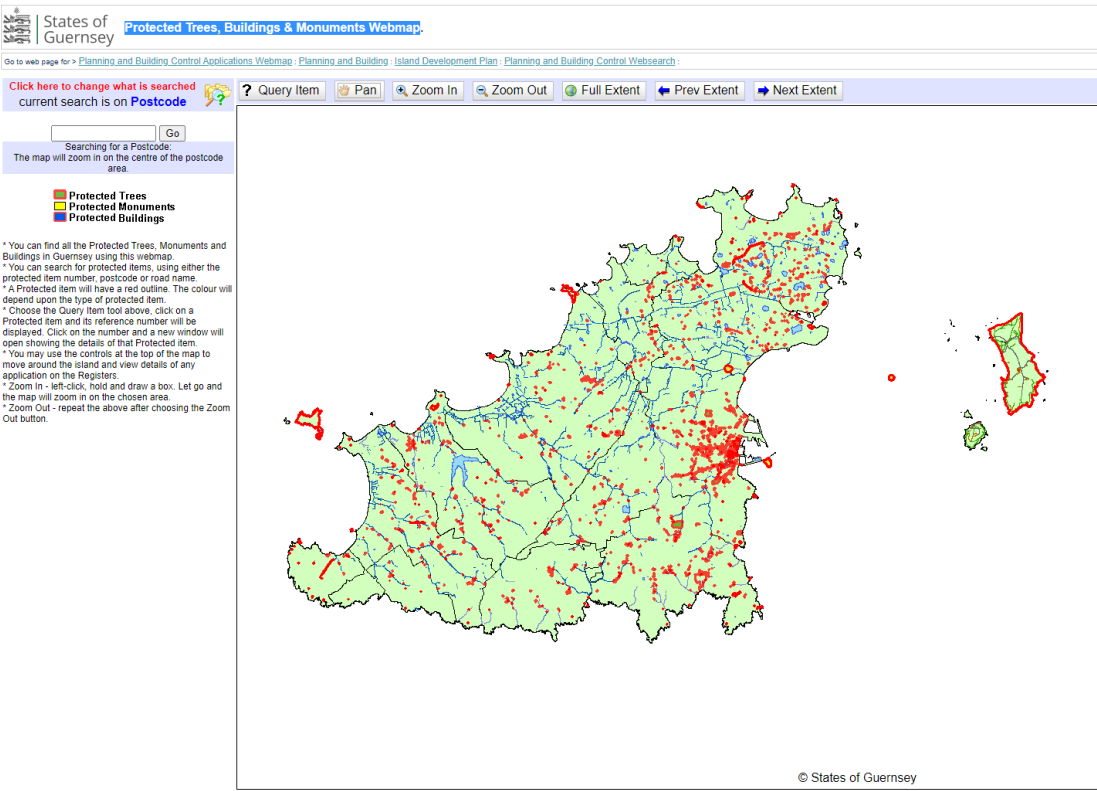


Fig. 7: Guernsey Webmap of Protected Trees

3.6 Alderney

This sections is a review of the current legislation and policy of tree protection in Alderney

Relevance to Jersey.

Alderney is the northern most inhabited of the Channel islands and forms part of the Baliwick of Guernsey, it is approximately 1/15 the size of Jerseys. It shares a similar climate and set of native species of trees to that of Jersey.

How is a tree defined?

A tree is defined by The Building and Development Control (Alderney) Law, 2002¹

“tree” means a tree the circumference over bark of which is 19 inches or more when measured at ground level (which means, in the case of sloping ground, the uphill side of the tree).

What trees are protected?

The Tree Policy² states that:

“In Alderney it is simply against the law to destroy any tree, and anyone wanting to remove a tree must apply for permission to do so.”

The States actively encourages an increase in the number of trees on the Island, in particular those which are native species.

Where are trees protected?

The States is concerned about the potential loss of trees anywhere on the Island but especially around the built areas.

How does a tree become protected?

Any tree fitting the definition is legally protected through The Building and Development Control (Alderney) Law, 2002

If a tree is permitted to be removed, the Building and Development Control Committee will generally wish to see it replaced either with a native species appropriate to the location, or with planting or landscaping, to mitigate for the loss of the tree’s effect.

Exemptions?

- Supplementary planning guidance on trees³ recommends to always ask Planning Office which will be able to advise on whether or not consent is needed and can also advise on tree care.
- Dead, dying, diseased or dangerous trees do not require consent but the Planning Office should be notified so that the Planning Officer can confirm that an application for its removal will not be required. The Planning Office will issue a letter confirming this.
- The trees smaller than 19 inches in circumference.

Who can do works on a tree?

Local contractors are recommended, although no individual ones are named. In some cases, smaller works can be done by an individual.

Summary

Pros: blanket protection is a simple and effective method, given the scale of Alderney. The supplementary planning guidance includes practical and accessible explanation and notes.

Cons: the definition of a tree potentially leaves out a large number of trees. 19 inches (ca 48cm) circumference translates to a tree with roughly 15cm diameter trunk - for some species that would mean that mature trees wouldn’t fall under this protection.

References:

1. The Building and Development Control (Alderney) Law, 2002 <http://www.alderney.gov.gg/CHttpHandler.ashx?id=134030&p=0>
2. The Tree Policy <http://www.alderney.gov.gg/CHttpHandler.ashx?id=133796&p=0>
3. Supplementary planning guidance on trees <http://www.alderney.gov.gg/CHttpHandler.ashx?id=144567&p=0>

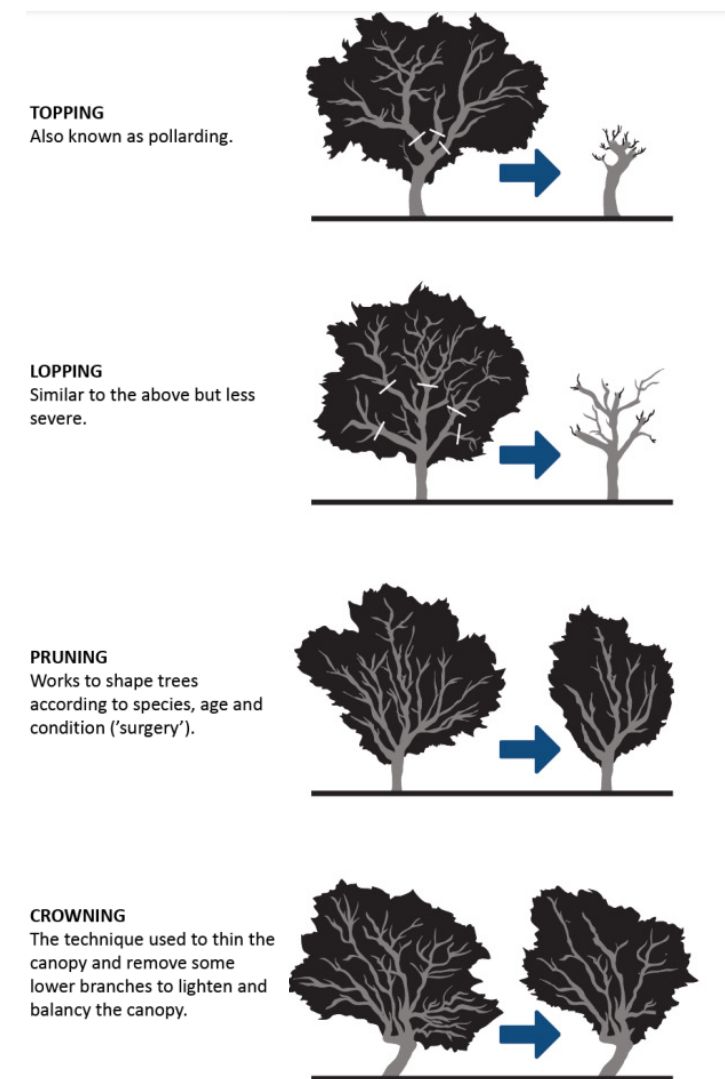


Fig.8: Alderney pruning categories and techniques diagram



Fig.9: Sample tree of ca. 40cm circumference that would be excluded from protection under Alderney definition of a tree

3.7 Germany (Berlin)

This sections is a review of the current legislation and policy of tree protection in Germany⁴.

Relevance to Jersey.

Germany has a developed legislative system and high level of commitment to the protection of the environment. Included is legislation for Berlin^{1,2}, a place with stricter protection and land use that covers a range of conditions.

How is a tree defined?

No legal definition of a tree is included in the Berlin legislation.

Where are trees protected?

- Trees are protected in general if they form part of a:
 - Nature reserve
 - Natural monument
 - State forest

What trees are protected?

- In an urban environment (owned by the public or private), all existing deciduous trees, native conifer trees (Pinus sylvestris) and fruit trees (such as Juglans regia and Corylus columna), are protected, if the trunk girth is more than 80cm at 1.3m height; for multi-stemmed trees one trunk girth needs to be bigger than 50cm at 1.3m;
- All trees part of a mitigation planting scheme are protected, even if those are smaller than the above regulation. Same for local character trees which are protected by a special landscape protection plan or are part of a development plan.

How does a tree become protected?

Decided by size and location, see above.

Exemptions?

The following trees are not protected:

- Trees within hedges
- Trees on roof gardens
- Trees in planters
- Trees a part of nurseries and garden centres
- Permitted is professional care and maintenance measures as well as the removal of dead wood

- and damaged branches;
- Professional removal of branches up to a maximum circumference of 15 cm, if required in the context of roof and façade clearance; road clearances; creation of the clearance profile for footpaths, driveways, fire access, etc.

Exceptions, measures which required a written application / approval:

- The tree poses a danger to people or property.
- The trees is dead.

Who can do works on a tree?

It is prohibited to remove, destroy, damage, cut or otherwise impair the continued existence of protected trees or parts of them (above and below ground) without the required permission. This includes building or streetworks and activities that can lead to soil pollution.

If the removal of a protected tree is approved, the applicant is obliged to provide ecological compensation. The applicant may choose between replacement plantings or the payment of a compensation; the first is always preferred.

Summary

Pros: Default tree protection to all trees with reasonable exceptions and clear requirement for professional care makes Berlin legislation onerous.

Cons: More urban context, excludes agricultural aspects present in Jersey.

References:

1. In German: Ordinance to protect the trees in Berlin (Verordnung zum Schutze des Baumbestandes in Berlin) <https://gesetze.berlin.de/bsbe/document/jlr-BaumSchVBEV7P5>

2. In German: Tree Protection Ordinance of the City of Munich (Baumschutzverordnung der Landeshauptstadt München)<https://www.muenchen.de/rathaus/Stadtrecht/vorschrift/901.html>

3. In German: Munich The Tree Protection Ordinance (Die Baumschutzverordnung) <https://www.muenchen.de/rathaus/Stadtverwaltung/Referat-fuer-Stadtplanung-und-Bauordnung/Natur-Landschafts-Baumschutz/Baumschutz/Baumschutz.html>

4. In German: Law on nature conservation and landscape management. Federal Nature Conservation Act. (Gesetz über Naturschutz und Landschaftspflege) <https://www.buzer.de/s1.htm?g=BNatSchG&f=1>

3.8 Poland

This sections is a review of the current legislation and policy of tree protection in Poland.

Relevance to Jersey.

Poland has a similar climate to Jersey and will face similar challenges related to climate change in the coming decades. Unlike in Jersey, 81.8% of Poland’s forests are state-owned.

How is a tree defined?³

“Tree” a perennial plant with one main shoot lignified (trunk) or several main shoots lignified and branches forming a crown at any time during plant development.

“Bush”, a perennial plant that branches into many equal woody shoots, does not form a trunk or a crown, and is not a creeper

What trees are protected?

Types of tree protection are numerous:

1. Aggregation protection:
 - a. Protection of trees aggregation (i.e. forests)
 - b. Unique clusters (not singular trees)
 - c. Significant historical or environmental importance
2. Individual trees
 - a. Monuments of Nature (qualitative criteria based on species and size)
 - b. Heritage, cultural or scientific significance
 - c. Strict species protection (28 species under full protection, 6 species under partial protection)
3. Organisations and initiatives
 - a. Local and national associations
 - b. International Society for Trees Cultivation and Protection Poland
 - c. European Arboricultural Council
 - d. Institutes and arboretums

Tree protections are given to areas of nature protection such as national parks and nature reserves, protected landscape area, ecological or landscape-nature complexes and protected species habitats among others.

Where are trees protected?

In addition to the special areas outlined above, all trees and shrubs that are 10 years or older require a written permission from a local town hall (or other authority) in order to be cut down. This includes any tree and shrub in public or on private properties. (Note: conflicting information is received and needs to be confirmed - see Exemptions).

How does a tree become protected?

Based on size, species, location and national/cultural significance of a tree or an area.

Exemptions?

Outside of specially protected areas:

- Trees can be removed on the grounds by the owner as long as it’s not for commercial use and if they measure to be less than 50-80cm in girth, depending on species.
- For bigger trees in case of non-commercial use, the intention to remove the tree should be logged to a local authority.

Who can do works on a tree?

Depending on the location, tree species and size it could be anyone or stricter rules may apply requiring a forestry professional and a permission.

The penalties for illegally removing trees and shrubs in Poland are considered to be very high.

Summary

Pros: Note should be taken for blanket protection of trees that are of a particular size and species - these can be considered for use in Jersey.

Cons: Current Polish legislation complexity has limited applicability within Jersey context due to a different scale and forest cover.

References:

1. Forest Management in Poland (2015): <http://www.fao.org/forestry/43155-0df7c31227721bf2798efd6252dc2f42b.pdf>

2. Annual “Forests in Poland” Report (By State Forests, 2018): <http://www.lasy.gov.pl/pl/informacje/publikacje/in-english/forests-in-poland/fortests-in-poland-2018-4.pdf>

3. In Polish: Nature Protection Act <https://www.infor.pl/akt-prawny/DZU.2009.151.0001220,ustawa-o-ochronie-przyrody.html>

3.9 France

This sections is a review of the current legislation and policy of tree protection in France.

Relevance to Jersey.

France is Jersey’s closest European neighbour. It shares a similar climate and set of native species of trees to that of Jersey.

How is a tree defined?

No legal definition of a tree is included in the French legislation.

What trees are protected?

If the tree is located in one of the following areas, it is protected, it cannot be felled or pruned (unless it is dangerous) without permission:

- Classified wooded area (EBC)¹, which includes woodlands, forests, parks, isolated trees, hedges ges or plantations of alignment, to be preserved, protected or created.
- Vegetated Area to be Enhanced²
- Heritage Zones and Remarkable Heritage Sites³, a tree is protected if it is located within a 500 m radius of a listed or registered historic building.

Where are trees protected?

In addition to the special areas outlined above, all trees are protected in⁴:

- Coastal areas;
- Nature reserves
- Trees next to property boundaries (hedgerows)⁸

How does a tree become protected?

The best way to protect a tree is to register it as a Classified Woodland Area (EBC)⁷ in the Local Urban Plan (PLU). The Local Urban Plan (PLU) is a planning document on a municipal or inter-municipal scale, lays down the general rules and easements for land use.

Exemptions?

Trees aren’t protected unless these are part of the Classified wooded area (EBC) or in the areas described above.

The owner of a tree has a number of obligations. He is responsible for its maintenance and responsibility for any damage it may cause. If the tree poses a danger to people or property, it needs to be removed.

Who can do works on a tree?

If the tree is protected, a specific form called Prior declaration of works (DP) needs to be submitted to the Urban Department. Depending on the situation, the tree owner or qualified operative can do the works.

Summary

Pros: Trees are generally protected in key habitats and ecologically sensitive areas. Classified Woodland Area (EBC) allows more control to local authorities.

Cons: Complex legislation system based on the conditions and location where the tree is. It can be difficult to navigate.

References:

1. In French: Classified Wooded Area, Urban Code Art. L113 https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006074075/LEGISCTA0000031210295/#LEGISCTA0000031212507

2. In French: Vegetated Area to be Enhanced, Urban Code, Art L151-23 https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006074075/LEGISCTA0000031211195/#LEGISCTA0000031211888

3. In French: Vegetated Area to be Enhanced, Urban Code, Art R421-17 https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006074075/LEGISCTA000006188286/#LEGISCTA000006188286

4. In French: Historic Heritage Law 13/12/1913 <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000315319/>

5. In French: Natural Heritage 02/05/1930 <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006074251/>

6. In French: Natural Heritage Environment Code https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006074220/LEGISCTA000006176518/#LEGISCTA000006176518

7. In French: Landscape Law 08/01/1993 <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000541949/>

8. In French: Civil code Trees near properties https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006430133/

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Section 4

Recommendations

4.1 Introduction

This section presents a selection of recommendations the regulatory framework for tree protection and management in Jersey.

Note: for the purpose of this report the regulatory framework is understood to mean the operations and measures of the Government of Jersey (GoJ).

The recommendations focus on 4 key areas, as identified in the project brief:

1. Establish an appropriate and proportionate threshold for the regulation of works affecting trees, including the definition of what constitutes a tree for the purposes of regulation.
2. Determine if and when explicit permission is required to be sought for all or some work to trees, including an examination of the potential introduction of a competent persons’ scheme for all or some works to trees;
3. Set out how permission should be sought, where that might also include provision for transparency and public consultation in decision-making for works affecting trees.
4. Consider the regulatory impact of the introduction of a new legal framework relative to the potential for the introduction of fees (for applications); their scale; and the level and nature of resource which would be required to administer and implement a new regulatory regime alongside existing legal provisions.

4.2 Overview of Section 3

The comparative analysis of differing jurisdictions identified relevant elements that could be utilised to both inform the wording, and regulatory support, of the proposed legislation of Amendment No 8 to the Planning and Building (Jersey) Law 2002.

4.2.1 General findings

- Across all jurisdictions legislation varies as does the policy guidance, conditions, standards and enforcement.
- It would appear that jurisdictions with significant natural resources (i.e woodlands and a lot of trees) have less pressure to act to tighten legislation. However jurisdictions with woodland abundance were generally noted for being forward thinking about this approach - Germany and France being key examples.
- Across all reviewed jurisdictions the benefits of trees are widely acknowledged and agreed upon. The intention and requirement to protect them are also agreed upon. It is the level of protection and legislation attributed to this protection that varies.
- In all jurisdictions reviewed, a form of protection is provided to those trees which are deemed to have value or identified as needing protection. These trees are protected through:
 - The regulatory framework (i.e Jerseys Protected Trees List or TPOs in England, Scotland, Guernsey);
 - Trees not on identifiable lists, are afforded protection from other routes, though are generally focused on the protection of the setting of an area rather than the tree itself;
 - Smaller territories (Isle of Man, Alderney) can adopt approach of blanket protection across their territory as their size allows for easier management of tree protection.
- England was generally considered to have the widest approach to protecting trees through the regulatory framework. Significant policy changes are from published white papers and the recent Environment Act. As such England has been used as a baseline jurisdiction in developing recommendations in this section.

4.3 Project Brief - Key Area 1

Establishes an appropriate and proportionate threshold for the regulation of works affecting trees, including the **definition of what constitutes a tree** for the purposes of regulation.

Appropriate and proportionate threshold for the regulation of works

The goal of tree preservation in a development project is to identify and preserve trees with good health, structure and form, while felling trees which are of poor health or dangerous. The recommendations presented consider the most appropriate approach for Jersey.

Definition of what constitutes a tree

Legal definitions, of what constitutes a tree, were identified in the comparative analysis (Section 3 of this report). Definitions vary, for example:

The definition in the Isle of Man, complimented by a list of species and genera that it considers not to be trees; is as follows:

“a woody perennial plant, typically (in its natural form) having a stem or trunk which can attain a height of 6m or more, and bearing lateral branches at some distance from the ground.”

The definition in Poland is as follows:

“Tree” a perennial plant with one main shoot lignified (trunk) or several main shoots lignified and branches forming a crown at any time during plant development.

The definition in Alderney is as follows:

“tree” means a tree the circumference over bark of which is 19 inches or more when measured at ground level (which means, in the case of sloping ground, the uphill side of the tree).

In the UK their is no definitive legal definition of a tree though a number of judgements have been made through the Court of Appeal¹ which provide guidance.

The UK system provides additional information to define trees that should be afforded protection, for example those in a:

Conservation Area - a tree to be protected is one defined as with a diameter in excess of 7.5cm (3 inches) measured 1.5 metres (5 feet) above ground level are protected by law.

References:

1. <http://arbmap.co.uk/news/court-of-appeal-rules-in-tree-definition-row>

The alteration proposed by the GoJ is similar to definitions above, (as per Section 5) is as follows:

- “tree” means a tall perennial plant having a permanent woody or fibrous trunk, a root system and a crown of foliage, or such plant of a similar nature as the Minister may by Order prescribe, and includes –*
- (a) a single tree of any age, genus, species, cultivar or variety;*
 - (b) a group of trees;*
 - (c) a hedgerow.”*

Recommendation #1 - the blanket level of protection for all trees with comprehensive, clear and reasonable level of exemptions is to be proposed for Jersey.

So as to provide the highest level of protection to the existing tree stock but maintain flexibility on serving the needs of the community e.g. farming, highways safety.

Recommendation #2 - the alteration to the definition proposed by the GoJ should be added to through the proposed amendment to The Planning and Building Law.

So as to ensure a coherent and fully understood definition of what constitutes a tree is inscribed in legislation.

Recommendation #3 - the alteration to the definition should either consider the inclusion of the term sapling (to protect young trees) or satisfy itself the terminology proposed:

- (a) a single tree of any age, genus, species, cultivar or variety;*

is sufficiently agreed upon and understood to cover young trees.

It is proposed that the use of the terminology from the UK Conservation Area:

a tree to be protected is one defined as with a diameter in excess of 7.5cm (3 inches) measured 1.5 metres (5 feet) above ground level would provide suitable clarification on

So as to ensure young trees are protected. It is noted that this information would be best suited in either a tree guidance note or policy document.

4.4 Project Brief - Key Area 2

Determine if and when explicit **permission** is required to be sought for all or some work to trees, including an examination of the potential introduction of a **competent persons’ scheme** for all or some works to trees.

Permission

The Protected tree List in Jersey at present acts as this source of information to ensure explicit permission is required. However it is acknowledged that this current level of protection and permission is resulting in trees being needlessly removed.

The number of protected trees is limited, the list itself lacks details on these tree and associated plans need greater precision to identify locations.

Current guidance is limited to be read in respect of protected trees only. This is potentially resulting in works to not protected trees being undertaken outside of this guidance, which can have long term detrimental impact on trees and can result in their decay, if undertaken incorrectly.

Competent persons’ scheme

A critical appraisal of the existing competent persons’ scheme (Approved schemes for certifiable building work) is provided in Section 2 of this report.

Works to trees is a skilled job; a tree is a living organism and pruning does inflict a wound on the tree, and its ability to withstand a wound and also maintain healthy growth will be affected by the quality of pruning the tree gets.

Establishing arborist in the competent persons scheme would ensure that works to trees are to recognised national standards¹ and they are members of professional organisations and guarantee to carry out work to a high standard. In England, the guidance note² in respect of tree works recommends that:

- Tree work is a dangerous activity and should be carried out by trained, competent and appropriately insured arborist.
- Tree work should be carried out to a good standard. LPAs in England will usually require the work to comply with BS3998 Recommendations for Tree works.²

The guidance note also suggests contacting the relevant LPA (in England) for guidance on selecting a suitable contractor.

In England it is an expectation that works are carried out by a suitably experienced arborist and comply with current arboricultural best practice.

It is noted that in Jersey their is a restricted labour supply and that recommendations may cause a monopoly in the market. It is understood the number of tree surgeons is restricted in Jersey due to its size and current requirements. Of the tree surgeons available only one is an approved contractor by the Arboricultural Association.³

References:

1. https://ecab.planningportal.co.uk/uploads/lapp/guidance/guidance_note-works_to_trees.pdf
2. BS 3998 Tree work - Recommendations and BS 5837 – Trees in Relation to Design, Demolition and Construction <https://shop.bsigroup.com/products/tree-work-recommendations>
3. <https://www.trees.org.uk/Accreditation/Become-an-ARB-Approved-Contractor>

Recommendation #1 - it is proposed to adopt a similar approach of tree assessment to that of the Isle of Man (refer to Section 3.4 - Figure 2.).

So as to ensure all trees in Jersey are assessed in the determination of the level of works and permission that is required. A suitable flow chart should be tailored for Jerseys needs in conjunction with the Jersey Tree Strategy.

Recommendation #2 - it is proposed to add arborists to Jerseys competent persons’ scheme, establishing a list of suitable contacts and amend GoJ guidance text on Carrying out work on a protected tree to include:

“...works are required to be carried to an appropriate standard by a Government-approved tree surgeon (list as provided by the IHE) and comply with current arboricultural best practice.”

The appropriate standard definition to mean work to to comply with BS3998 “Recommendations for Tree works”.

The list preparation will require additional resource by GoJ; it can be replaced by a requirement to be an ARB Approved Contractor but as mentioned, this requirement will place additional demand on Jersey labourers that is might not be prepared to successfully adapt to.

So as to provide a greater level of assurance to the inhabitants of Jersey that trees are recognised to a sufficient level of professional care and to minimise repeat remedial inspection work for the States Arborist.

Recommendation #3 - The development of accessible definitive advice for the general public on how to undertake work to trees which are not protected.

See examples in sections “2.3.8 Jersey Branchage” on page 14, “3.4 Isle of Man” on page 22.

So as to provide greater public clarity on the quality of work required and best practice to protect tree health and habitats for wildlife.

4.5 Project Brief - Key Area 3

Set out **how permission should be sought**, where that might also include provision for transparency and **public consultation** in decision-making for works affecting trees.

How permission should be sought?

In England, in order to gain consent to carry out any work on a tree that is protected by a TPO or within a Conservation Area, the national standard application form called Application for Tree Works¹ should be completed.

Trees afforded protection by the legislation noted above, require the application form to be accompanied by a suitable level of detail and supporting evidence; a guidance note to assist applicants is available². The following is a summary of the basic information to be submitted:

- Sketch plan - A detailed sketch plan to clearly identify the tree(s) in question (to have worked carried out on it), with other trees in the vicinity also shown, and the location of buildings, property boundaries and roads.
- A full and clear specification of the works to be carried out.
- For works to trees protected by a TPO it is required to state the reasons for the proposed works and provide evidence in support of the stated reasons.

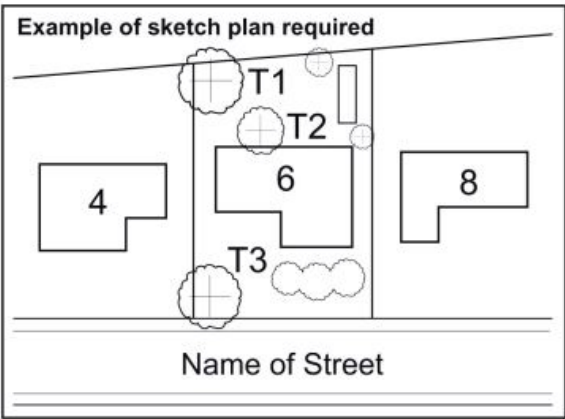


Fig.10: Sketch plan example (C) Malvern Hills Borough Council

Dependant upon the resource available in the LPA, an appropriate officer (Landscape or Arborist) will then make a site visit to inspect the tree(s) in question.

Following the site visit, and consideration of the reasons given in the application, a decision will be made; and a Decision Notice issued.

This approach is not dissimilar to the Jersey system, though is more comprehensive and includes clear information about:

- Existing searchable TPOs, including on online maps
- List of recommended exceptions for seeking permission to guide the Planning professionals
- Assessment criteria for granting TPOs
- Detailing duties for replacement planting
- Extensive Model forms of TPOs
- A number of useful flowcharts to illustrate the process.³

The Guernsey AN4 Protected Trees (Section 3.5), a guide to tree protection procedures provides a coherent and accessible flow chart to demonstrate to the general public how the decision-making process is made in protecting trees.

This guide provide further information to the general public to explain how trees are formally protected and how permission should be sought.

Recommendation #1 - it is proposed that the guidance related to TPOs is reviewed by GoJ. Best practice should be adopted, two options are proposed:

Option 1. The best practice is absorbed into List of protected trees legislation and guidance. Given the legislation already exists, this is a faster option and can be aimed to be undertaken in Q1/Q2 2022.

Option 2. Reintroduction of TPOs as noted as an ambition in Government Plan 2021–2024 (P.130/2020): 21st Amendment⁴; it is understood that this change can take up to 5 years as it will require wider amendments to the existing legislation. The benefit will be a more aligned and robust system and ability for faster changes and coordination with the best practice in the UK and Guernsey.

It is also proposed that conservation areas (as noted in the emerging Jersey Tree Strategy) should be investigated in conjunction with the Chief Planning Officer.

So as to provide a greater level of protection to trees, utilising the best practice in a recognised and robust legislative process.

Recommendation #2 - it is recommended that an inter-island working group studies the process of introducing Guernsey TPOs through the enactment of the 2005 Land Planning and Development Law.

So as to ensure lessons learnt from Guernsey are take on board in the introduction of the TPOs, with respect of the TPO, related guidance, GIS mapping and the success (and failures) of public consultation around their introduction.

Recommendation #3 - it is recommended that a tree guidance note or policy document is produced to bring together all relevant strands of information surrounding tree identification, selection, protection and the decision-making process.

So as to ensure all relevant information is coherent and accessible for the general public to act as one source of truth.

References:

1. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710921/Form031_england_en_revised_2_.pdf
2. https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-works_to_trees.pdf
3. <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#Annex-A-Flowcharts>
4. [https://statesassembly.gov.je/assemblypropositions/2020/p.130-2020%20amd.\(21\).pdf](https://statesassembly.gov.je/assemblypropositions/2020/p.130-2020%20amd.(21).pdf)

Public consultation

Increased public and political concern about climate change and nature has resulted in growing concern about trees and woodland habitats. Jersey has a number of charities and voluntary organisations¹ who care for and actively lobby for greater protection.

In Section 2 of this report presented a critical review of The Protected tree List. A planning appeal report² from 2017 highlights the lack of public information available on the listing process. It suggests that listing criteria should be published, together with the way in which the criteria will be measured and evaluated, stating that publication of detailed guidance “would help the public have confidence in the listing process”.

The emerging Tree Strategy for Jersey supports these concerns of a lack of transparency to the system.

The information contained on the GoJ website in respect of ‘List of protected trees’, provides no detail on how a tree is selected - beyond the following:

- *Trees are protected where they have high amenity value and where they make a valuable and important contribution to the local environment. Most often, trees are given protection when they are the subject of some type of threat, usually a development proposal.*
- *It is agreed that this level of detail is insufficient and lacks suitable and relevance information to provide inhabitants of a clear understanding of the process.*

There are a number of suitable guides and leaflets that are provide, particularly in respect of TPOs for example both in Scotland³ and England⁴. These documents are written for tree owners, their neighbours and local community groups, and provide answers to some of the most common questions about tree preservation procedure.

The information contained on the GoJ website in respect of ‘Carrying out work on a protected trees’, provides a basic level of detail surrounding this process, though it is limited and has been criticised.

A suitable example is abstracted below from the Section 16.4 of the Isle of Man, Tree Protection Policy⁵ that provides a concise list of how a detailed assessment of the tree, that has been applied to be removed will be assessed.

Officer assessments

16.1 Detailed application assessments, undertaken by officers with arboricultural knowledge and experience, will only be carried out where applications include:

- (a) Registered trees;*
- (b) A tree with a stem circumference of more than 900mm measured at 1.5m above ground level;*
- (c) Any tree located within a built up area (‘BUA’) or planning conservation area with a stem circumference of more than 600mm measured at 1.5m above ground level;*
- (d) More than 30 trees with a stem circumference of more than 600mm measured at 1.5m above ground level OR more than 5 trees with a stem circumference of more than 900mm measured at 1.5m above ground level.*

Consultation should seek to influence guidance and vice versa. Substantial guidance is provided through all the jurisdictions reviewed. In Producing a guidance note, it can be easily referenced, updated and act as a single source of truth for all users. This guidance should provide all information in laymen’s terms to explain the process.

For example Huntingdonshire District Council⁶ has produced a series of Tree Guidance Notes. These provide accessible information surrounding the benefit of trees explanations as to how trees can be damaged and other information to signpost the general public in following best practice in tree management.

Importantly these guidance notes form part of a suite of documents in support of a suitable and successful Tree Strategy document⁷.

Extensive good practice guidance is available in the UK via the British Standard publications⁸ and NGOs publications. For example, The Tree Design and Action Group are a group who actively campaign for the best approach to stewardship and

provide critical advice to central government on policy in respect of trees⁹. Such guidance should be made more prominent and available to the persons needing to work on trees.

Recommendation #1 - it is recommended that a tree strategy document is produced. It is noted that the GoJ has a Draft Jersey Tree Strategy, that will be published for consultation in early Q1 of 2022.

So as to sets out our how trees will be managed and protected across Jersey to a defined time i.e. 2030 contributing the appearance of Jerseys landscape, providing significant environmental and health benefits, and shaping the areas in which its inhabitants work and live. So supporting the 5 principles of the Government of Jersey / The Carbon Neutral Strategy and Government Plan 2021–2024 (P.130/2020): Twenty First Amendment

Recommendation #2 - the public consultation process should be clearly communicated and the documentation made available to the public.

So as to provide clarity of the decision process to the public and that the Strategy serves the public good.

References:

1. Draft Tree Strategy for Jersey
2. <https://www.gov.je/md/MDAttachments/Planning%20and%20Environment/Decisions%20in%202017/mdpe20170024rpt.pdf>
3. <https://www.gov.scot/publications/scottish-planning-series-planning-circular-1-2011-tree-preservation-orders/>
4. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/244528/2127793.pdf
5. https://www.gov.im/media/1371724/tree_protection_policy-v19.pdf
6. <https://huntingdonshire.gov.uk/media/1170/gn3-trees-and-development.pdf>
7. <https://www.huntingdonshire.gov.uk/media/5069/huntingdonshire-tree-strategy-2020-2030.pdf>
8. BS 8545:2014 Trees: <https://shop.bsigroup.com/products/trees-from-nursery-to-independence-in-the-landscape-recommendations>
9. Trees and Design Action Group Guides <https://www.tdag.org.uk/our-guides.html>

4.6 Project Brief - Key Area 4

Consider the regulatory impact of the introduction of a new legal framework relative to the potential for the **introduction of fees (for applications)**; their scale; and the level and nature of resource which would be required to administer and implement a new regulatory regime alongside existing legal provisions.

Introduction of fees (for applications)

At present there is no application fee in Jersey for proposing to undertake works to a tree (on the Protected Tree List).

As noted in Section 4.1.3, works to Trees Subject to a Tree Preservation Order (TPO) and/or Notification of Proposed Works to Trees in Conservation Areas (CA) (in England) within a LPA require a form to be completed and submitted. Unlike most other planning applications (in England) there is currently no fee is payable when making an Application for tree works.

The DEFA (Isle of Man) under Section 8 of the The Tree Felling Licence (Fees) Order 2013¹ requires a fee of £20.00 for each application made. This fee is noted as being for processing the application only (and does not guarantee that a licence will be granted).

In France, the application called “prior declaration of work” requires no fee to pay being free to submit, however there is a requirement for a consultant (suitably recognised) to fill out the form, dependant on the application it can cost a minimum of £1500.

In Germany, each authority has a different approach to charging a fee for an application, though all appear to apply a charge. For example in the City of Cologne an application cost 65 euros, then a subsequent 17.50 euros per additional tree.

In Poland, the fee and process is again similar - costing approximately £10-20 per application.

As noted in Section 4.1.3, on receipt of an application it must be processed, the trees inspected and a decision note issued. It is noted that currently there exists a resourcing issue and IHE needs to ensure officers with relevant arboricultural or landscape backgrounds are employed to undertake this.

Level and nature of resource

Based on Jersey Trees for Life feedback (and similar comments), it is considered that the current level of resource does not provide adequate tree protection. It is considered that the introduction of additional revenue to support the enforcement of a new legal framework is appropriate.

As noted in this section (in particular section 4.5), the introduction of new legal framework must be supported by transparent, robust and accessible guidance to support applicants and provide a common platform for communications. This should reduce the pressure on the GoJ resources in this area.

Recommendation #1 - it is proposed that the need for a formal application to be made for works to trees:

- on the Protected Tree List (or with TPOs); or
- within a Conservation Area should these be implemented in the future as proposed under Amendment 21; or
- falling under criteria of heightened protection of a tree.

So as to reduce the pressure on the GoJ resources and make a decision easier using the standard protocols.

Recommendation #2 - it is proposed that a fee is introduced to accompany the submission of an application to be made for works to trees.

So as to cover the anticipated additional administration work. The level of this fee should be reviewed within the GoJ. It is proposed a fee should be established in the range of £20-50. Consideration should be given to applying a subsequent fee per additional tree.

Recommendation #3 - it is proposed that the fines (and the wording in the legislation) associated with felling protected trees is reviewed and a sum clearly communicated as a minimum fine that will be enforced (See section 5 where this has been considered in greater detail).

The level of this fee is to be reviewed, as the current workload of the States Arboricultural Officer means that an additional qualified person shall be employed.

Recommendation #4 - it is proposed that funding is sought to support the increment of trained arboricultural/landscape officers. The funding is to cover short-term aims of developing guidance on tree works, the introduction of Tree Surgeons List, and improvements to the List of protected trees process (alternatively introduction of TPOs). It is anticipated that funding to ongoing costs can be covered via fees paid from planning permissions, fines and works on trees permissions.

So as to cover the anticipated additional requirements of enforcing changes in legislation, application and promotion of emerging Tree Strategy and support the States Arborist.

4.7 Government Plan 2021–2024
List of changes to the policy

This section considers the list of actions set out in the Government Plan 2021–2024 (P.130/2020): 21st Amendment)¹.

The amendment has included a commitment to funding tree preservation initiatives and a list of actions. The table below lists these actions with key comments drawn from the research undertaken in this review and the recommendations made.

This information is to ensure relevant good practice uncovered is provided to the GoJ as added value and not lost due the prescription of the brief.

References:

1. [https://statesassembly.gov.je/assemblypropositions/2020/p.130-2020%20amd.\(21\).pdf](https://statesassembly.gov.je/assemblypropositions/2020/p.130-2020%20amd.(21).pdf)

Policy	Comment
1. Develop an Island Tree Strategy	Draft version of the Tree Strategy provides wealth of perspectives and summarises an extensive community and stakeholder engagement.
2. Start using Tree Preservation Orders	Our review shows that TPOs are a flexible and strong tool to protect trees across different environments. As noted before, best practice from TPOs can be alternatively adapted for the List of protected trees.
3. Enforcement of tree preservation legislation	Currently no defined fine is included in the guidance; more transparency around the level of the fine amount could be achieved using tree Amenity assessment such as CAVAT or i-Tree. More clarity and resource needs to be given to the enforcement of tree protection violations.
4. Criteria determining protected status	Blanket criteria is recommended as the highest level of protection. Set of exemptions needs to be developed. The new criteria should include aspects beyond amenity such as effects on biodiversity and carbon sequestration.
5. Undertake an Island-wide Tree Survey	It is suggested that digital tools such as LIDAR scans can be used for high-level tree survey, followed by more extensive survey in areas that have high potential to include trees of high value. The materials can be used for defining planning conditions, assessing the development impacts on the community and the ecological systems.
6. Public List of Protected Trees	It would be beneficial to have a publicly accessible online map that shows protected trees, areas and conservation zones clearly and in a comprehensive manner.
7. Stakeholder engagement	In addition to stakeholder engagement as part of Tree Strategy development, the work of organisations such as Trees for Jersey, developing accessible online tools such as maps and guidances, can expedite the current tree protection ambitions.

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Section 5

Assessment of the impact

5.1 Introduction

This section provides an assessment as to how the existing legal provisions affecting protected trees can be complemented.

5.2 Proposed changes to legislation

The intention of Amendment no 8 to the Planning and Building (Jersey) Law 202 is to result in:

- A more specific definition of what constitutes a ‘tree’ in the Planning and Building (Jersey) Law 2002; and
- The inclusion of actions involving trees within the meaning of the word ‘develop’.

With these changes, breaches of development control will also apply to where a tree is removed without permission.

5.3 Recommended changes to regulatory regime

The GoJ has a number of opportunities through its regulatory framework to direct, limit or prohibit any activity undertaken in relation to trees. These opportunities can be to complement the changes in legislation proposed under amendment 21.

Section 3 identified a number of relevant regulatory approaches (either through policy, guidance notes or operations), implemented by differing jurisdictions.

The following recommendations are considered to be suitable for the application to the GoJ:

- Review of the best practice in relation of TPOs, adaptation of the best practice for Jersey context (via TPOs of Protected trees list).
- The introduction of a blanket level of protection for all trees.
- The introduction of a tree assessment process (to support the blanket level of protection).
- Development of a Tree Strategy (and associated Tree Action plan).
- Production of relevant and associated tree guidance note of key processes (i.e assessment process, identification of a TPO/Protected trees, pruning, removal etc)

- All trees on the island to be surveyed and assessed at high level (size, location). Based on this, key areas identified that will require a more in depth survey including tree details, health, surrounding habitat surveys. A suitable webmap or equivalent is created to provide greater level of detail and transparency to the public.
- Strengthen the internal arborist/landscape officer resource within the GoJ to ensure the application and enforcement of the above.

5.4 Recommended changes to legislation

Each component of the proposed changes to legislation amendment is reviewed in the tables below.

The tables present the proposed changes (against the existing legislation) as debated on Tuesday the 5th October 2021 and include comment and recommendations based on the findings of Section 3 and 4 of this report.

5.5 Definition of the word tree

The meaning of the word ‘tree’ is contained in Planning and Building (Jersey) Law 2002.

Critical appraisal - ‘Current Law’

The current law does not provide a sufficient description, to define what constitutes a tree.

It includes vegetation which would not be recognised as a tree.

Critical appraisal - ‘Proposed change

The alteration to the description provides a greater level of clarity as to what constitutes a tree.

The definition goes further to state that it includes a single tree of any age, genus, species, cultivar or variety.

It also removes vegetation which are not suitable to be described by the altered description.

Content	Current Law	Proposed change
Definition of the word ‘tree’	“ ‘tree’ includes – (a) a single tree of whatever age, genus, species, cultivar or variety; (b) a group of trees; (c) a shrub; (d) a bush; (e) a hedge.”	“ ‘tree’ means a tall perennial plant having a permanent woody or fibrous trunk, a root system and a crown of foliage, or such plant of a similar nature as the Minister may by Order prescribe, and includes – (a) a single tree of any age, genus, species, cultivar or variety; (b) a group of trees; (c) a hedgerow.”
		Summary: the definition now includes a description of what constitutes a tree. ‘Shrub’ and ‘bush’ are no longer included within the definition of ‘tree’.

5.6 The meaning of the word ‘develop’ in relation to trees

The meaning of the word ‘develop’ is contained in Planning and Building (Jersey) Law 2002, simply put it means - to make a material change in the use of the land or a building on the land.

Critical appraisal - ‘Current Law’

At present the current law under the meaning of develop does not include the term tree.

Critical appraisal - ‘Proposed change

The alteration to the description provides a greater level of clarity as to what constitutes a tree.

The definition goes further to state that it includes a single tree of any age, genus, species, cultivar or variety.

It also removes vegetation which are not suitable to be described by the altered description.

Comment

It is unclear if the term vegetation is defined - in our interpretation it is taken to mean any flora - plant life or total plant cover (as of an area) ie tree, shrub etc

Content	Current Law	Proposed change
Meaning of the word ‘develop’ in relation to trees	“to remove a hedgerow or banque or other physical feature defining a boundary of the land or of any part of it”	“to remove a tree or banque or other physical feature defining a boundary of the land or of any part of it”
		Summary: ‘Hedgerow’ is not cited separately here because the proposed new definition of ‘tree’ includes ‘hedgerow’. ‘Tree’ is now included
	n/a – brand new sub-paragraph	“(k) to carry out on the land an operation to or involving a tree, such as the Minister may specify by Order.”
		Summary: note that the specifics of any ‘operation to or involving a tree’ is yet to be defined, and as stated, will need to be set out in an Order which will be separate to this particular Amendment.

5.7 Conditions attached to the grant of planning permission

A condition attached to the grant of planning permission (including permission given by a Development Order) shall fairly and reasonably relate to the proposed development.

Critical appraisal - ‘Current Law’

The current law does not provide any reference to the associated biodiversity benefits of trees.

It does include the term ‘vegetation’ which would not be recognised as a tree.

It is potentially unclear if the term vegetation is suitably defined and understood - in our interpretation it is taken to mean any flora - plant life or total plant cover (as of an area) ie tree, shrub etc. It is noted that this could be seen as in contracts to the changes proposed in the change to the definition of the term tree - were it is proposed to removed the terms ‘shrub’ and ‘bush’.

Critical appraisal - ‘Proposed change

The alteration to the description provides a greater level of clarity as to what constitutes a tree.

The definition goes further to state that it includes a single tree of any age, genus, species, cultivar or variety. It also removes vegetation which are not suitable to be described by the altered description.

Content	Current Law	Proposed change
Article 23 Conditions attached to the grant of planning permission	n/a – brand new sub-paragraph	“(j) the protection and improvement of biodiversity on the land.”
		Other unchanged sub-paragraphs of this Article that are of relevance to trees: “(f) the preservation and planting of vegetation on the land” And “(i) the restoration of the land and of any vegetation on it after the development has been carried out”

Comment

The addition of this sub-paragraph is suitable. It is reflective of the Environment Act passed in England early November 2021 that seeks to derive a minimum provision of 10% biodiversity net gain through development.

It is unclear if the term vegetation is defined and understood - in our interpretation it is taken to mean any flora - plant life or total plant cover (as of an area) ie tree, shrub etc

Recommendations

The GoJ regulatory framework/regime (and policy) should build upon this addition in legislation, to define the metrics of protection and improvement in respect of biodiversity. This would provide clarify the GoJ position.

A definition of the term biodiversity to be provided.

A review of any standard planning condition (which covers biodiversity) should be undertaken and either amended or a new condition developed to apply and enforce this change in legislation.

5.8 Definition of ‘protected tree’

Provides a simple statement regarding who is required to maintain a ‘list’ of what are known as protected trees.

Critical appraisal - ‘Current Law’

The current law requires for a list of protected trees to be maintained. This list is provided for the Government of Jersey’s website, with a search tool available.¹

The list has received criticism as it is not transparent as to how a tree is assessed to be placed on the protected the list. The primary aspect of this is that the process of identification, assessment and listing is not clear and transparent. However the current law only seeks for the protected trees to be identified based on their amenity value, as such missing the importance that trees play in respect of the environment, subdirectory and human health.

Note - the current level of information on a protected tree is extremely limited and does little to provide sufficient evidence that they are of amenity value to the Jersey.

It is considered that the term ‘protected’ does not provide a suitable of substantial definition of its meaning in this context.

Critical appraisal - ‘Proposed change’

No change is proposed.

Comment

The terms should be reviewed to ensure the value is assessed against additional

criteria than just amenity value.

‘Shrub’ and ‘bush’ no longer being included within the definition of ‘tree’.

It is noted that the terms ‘Shrub’ and ‘bush’ are included as typologies in the list of protected trees.

Should this be altered, or should a reference be made that a protected tree has the same definition of a tree.

PLANING LAW

- The List shall, in relation to each tree (or group of trees or hedge) contain –
 - (a) details of the tree; and
 - (b) a description, either in words or by reference to a plan, or both, of its position sufficient to identify it.

Recommendations

As noted we are proposing that their should be a blanket level of protection and changes that include the best practice to be adopted in specific protection (TPOs or List of protected trees). This would necessitate the change in legislation wording.

References:

1. <https://www.gov.je/citizen/Planning/Pages/ProtectedTrees.aspx>

Content	Current Law	Proposed change
Definition of ‘protected tree’	Requires the Chief Officer to maintain of a list of protected trees that should not, in the interests of the amenity of Jersey, be cut down, lopped, or otherwise altered or harmed without the Chief Officer’s permission.	N/a - no change proposed in the Amendment.

5.9 Offence in relation to trees

Offences to trees are only considered if the tree is protected.

Critical appraisal - ‘Current Law’

The current law only acknowledges that an offence has occurred should a tree listed (i.e on the List of Protected trees), or provisionally listed due to their amenity value.

Critical appraisal - ‘Proposed change’

No change is proposed.

Comment

The current law only considers it an offence to trees that are listed - again reinforcing the rationale as ‘amenity value’.

This fails to acknowledge that vandalism or other works to trees could be considered an offence as in other jurisdictions.

If TPOs and blanket protection is adopted as proposed it would necessitate the change in the current law. Other wording could be considered to strengthen this, for example:

*It is a criminal offence to cut down, lop, wilfully destroy or damage a protected tree without the council’s consent. The council can prosecute you for breaching a TPO.**

**note this is reference to TPOs*

Recommendations

The the current law should be strengthened to reinforce that it is a criminal offence to damage trees that fall within the criteria of protection.

5.10 Penalties for offences in relation to trees

The current law denotes that protected trees felled etc. without permission may incur a fine. No level of fine is specified. Fines for defacing or removing planning notices related to trees are level 2 on the standard scale (£1,000).

Critical appraisal - ‘Current Law’

The current law only acknowledges that an offence has occurred should a tree listed (i.e on the List of Protected trees), or provisionally listed due to their amenity value.

Critical appraisal - ‘Proposed change’

No change is proposed.

Comment

Whilst the statement provided below is provided, should a tree be felled:

No level of fine is specified.

This is considered too open to interpretation, and as such the application of any fine has been lacking in the past. For example more weight could be provided here in respect of defining levels of fines. for example:

Fines for breaching a TPO

- If you’re convicted of breaching a TPO, you could be fined :
 - up to £100,000
 - an unlimited amount

- When deciding a fine, the court will consider any financial benefit which accrued or is likely to accrue due to the offence.

This example provide figures and reinforces the level of fine could be unlimited (rather than not specified).

Recommendations

The the current law should be strengthened to reinforce that it is a criminal offence and to clearly define a level of fine that could be applied either a sum, or unlimited level.

It should also seek to incorporate a minimum level (this minimum level should be defined in review within GoJ to understand what level of resource is required to bring forward a case against an offence to ensure its costs are covered by the reviewing the offence.

It could be considered that the level of fine should also include for a valuation of the tree (utilising the CAVAT methodology) - which can be used as a guide and to aid clarity for the public. A scale of fines should be adopted

Content	Current Law	Proposed change
Offences in relation to trees	Offences currently relate only to trees that are listed, or provisionally listed, for their amenity value.	N/a - no change proposed in the Amendment.

Content	Current Law	Proposed change
Penalties for offences in relation to trees	Protected trees felled, etc. without permission may incur a fine. No level of fine is specified. Fines for defacing or removing planning notices related to trees are level 2 on the standard scale (£1,000).	N/a - no change proposed in the Amendment.

