



### **The Law relating to Trees, Shrubs and Hedges**

#### **Ownership**

A tree or shrub is regarded as attaching to the land, so whoever owns the land also owns the tree or plant growing there, regardless of who first planted it. If a tree happens to be located on a boundary then ownership is shared, and the agreement of both owners is needed for action relating to the tree.

#### **Rights/obligations**

There is no general obligation on the owner to cut back a tree (although see below on safety), or to trim a hedge. Branches overhanging an adjoining property belong to the owner of the tree, as does any fruit hanging from them, and there is no right in favour of the neighbour to take these branches or fruit.

However, if overhanging branches are a nuisance and an encroachment onto a neighbouring property, the neighbour is entitled to cut them back (unless protected, see below), although the lopped branches must then be offered back to the owner of the tree. The branches should not simply be dumped on the owners' land without prior discussion, and it may be necessary to dispose of unwanted branches elsewhere. It is not permissible to take access over the tree owner's property to carry out this work without their consent.

The position is similar with roots. If they encroach onto church land and are causing damage to walls or buildings, the owner of the property affected may be entitled to cut them back, unless the tree is protected. However, as this is likely to damage the tree it should first be discussed with the tree owner in the hope of finding a mutually acceptable solution. Care should be taken not to cut away the roots to the extent that the tree becomes unstable, creating a risk to the safety of people in the vicinity. Professional advice should always be obtained if in doubt.

Fallen leaves in Autumn are not considered to be a nuisance in law, and there is no obligation on anyone to sweep them up.

It will be clear from the above that it is strongly recommended that lines of communication are opened, and kept open, with neighbours, and that discussions take place before any action is taken.

#### **Protected Trees**

Some trees are protected, either because they are covered by a Tree Preservation Order (TPO) or because they lie within a conservation area. These trees must not be felled or even lopped without the prior consent of the local authority. Further information can be obtained from the local authority about whether a tree on church land is protected, and they should be contacted for consent for any works. It is permissible to cut down a protected tree without prior consent where there are

serious safety concerns, BUT as the fines can be high, it is important to be certain about the safety risks, and be prepared to provide evidence justifying the action taken.

## **Safety**

If concern has been expressed about the safety of a tree on church property, this MUST be investigated on behalf of the charity trustees, particularly if the tree is close to an area where there are a lot of people and therefore the risk is higher. A qualified arboriculturalist or tree surgeon can be engaged to advise on the stability of the tree and its branches, and to recommend what, if any, action should be taken. Care should be taken to ensure the specialist is suitably qualified and has insurance in place. It almost goes without saying that this advice should be followed promptly, as if office bearers have been warned about a potentially dangerous tree and fail to take any action, then that could result in a claim. However, landowners are unlikely to be held liable for damage caused by a tree if the damage was not foreseeable.

If there are concerns about the safety of a tree on a neighbour's property, that should be drawn to their attention, but it can be difficult to force a neighbour to deal with a potentially unsafe tree. If it is close to an area open to the public, then the local authority might be willing to step in.

Where trees close to a public road are considered dangerous, or impede sight lines, the roads authority can serve a notice under the Roads Scotland Act 1984 on the owner to have the tree dealt with. If the owner fails to comply the roads authority will carry out the work and seek to recover the cost.

## **High Hedges (Scotland) Act 2013**

Hedges are a frequent source of dispute between neighbours, and in an attempt to create a solution, this act came into force in 2014.

A high hedge is defined as a row of shrubs over 2 metres in height, which creates a barrier to light. An aggrieved neighbour can apply to the local authority for a "high hedge notice" requiring action to be taken where the hedge is preventing him enjoying his own property. The applicant will be expected to demonstrate that all other means of resolving the dispute have been tried and have failed.

If a local authority serves a notice and the hedge owner fails to comply, the authority can carry out the work and seek to recover costs.

## **Felling Licences**

If it is intended to fell a number of trees, a felling licence is required, although it should be noted that gardens and churchyards are exempt from this requirement. Further information can be obtained from the website of the Forestry Commission.

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