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Trees, forests and hedges - some frequently asked questions

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Trees, forests and hedges can provide numerous benefits. However, they can sometimes be the source of interest, concern or dispute in communities and neighbourhoods. This briefing outlines the main rules which can be used to deal with disputes, the rules on creating and removing forests and woodlands, and some of the ways in which the law protects trees. It is not legal advice and shouldn't be relied on for that purpose.



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Summary

This briefing provides an overview of the main rules in Scotland which can be used to deal with trees and hedges which are subject to dispute, and the rules on creating and removing forests and woodlands. It also outlines some of the ways in which the law protects trees. The key points in this briefing are as follows:

Tree disputes

1. Trees, hedges and forestry can provide numerous benefits. However, they can sometimes be the source of disputes in neighbourhoods, for example if they become overgrown or dangerous.
2. In trying to solve a dispute, once the ownership of the land in question has been established, the first step would normally be to try to resolve any issues informally with the neighbour in question before considering other remedies.
3. If a dispute cannot be resolved informally, the relevant local authority may be able to help as local authorities have a range of powers. These include the power to issue a high hedge notice under the High Hedges (Scotland) Act 2013 and powers to require the removal of trees where they could pose a danger to public roads or footpaths.
4. In situations where it is not possible to resolve a dispute informally or through a local authority, a range of civil law remedies can be relevant. The application of these remedies will depend on the facts of the case.
5. In some cases a letter from a solicitor reminding the neighbour of the relevant law may be sufficient to prompt action. However, there are situations where it may be necessary to bring a case in the civil courts. This can be an expensive and uncertain process which does not necessarily guarantee success. Court actions can also aggravate relations with the neighbour in question.
6. Individuals involved in a dispute relating to trees may need to take legal advice, particularly if a problem cannot be resolved informally. Legal advice is likely to be necessary where civil law remedies, or court actions, are contemplated.
7. The management of trees may also require the use of a professional arboriculturist or tree surgeon, e.g. through [the Institute of Chartered Foresters](#).
8. Trees may be protected from damage/destruction by tree preservation orders (TPOs) or because they are situated in a conservation area. It is important to check this point before felling or working on a tree as it is an offence to carry out work on trees protected by a TPO or trees in conservation areas.

Rules on creating and removing forests and woodlands

1. [Scottish Forestry](#) is responsible for forestry policy, regulations and grants. [Forestry and Land Scotland](#) is responsible for the national forest estate. Local authorities are responsible for some tree-related questions, such as tree preservation orders, trees in relation to the planning system, hedges or street trees.
2. Both planting and felling trees generally require different permissions, though there

are some exceptions.

3. Planning permission through the local authority planning system is not normally required for forestry work (i.e. tree planting, felling or management). However, planning permission may be required for forestry infrastructure or, for example, things like mountain bike trails. Forest tracks and private ways are usually covered by 'permitted development'.
4. The requirements for planting new forests and woodlands depend on the size and location of the proposed site, and whether grant funding is sought. Anyone wishing to create woodland is encouraged to speak to neighbours and other interested parties.
5. To fell trees you generally need a felling permission. However, you do not need a felling permission to, for example, fell a tree in a private garden or in public open spaces. This means that felling rules do not apply in many neighbour disputes.

The information in this briefing is aimed at supporting the work of MSPs. It is not intended as legal advice and should not be relied on for that purpose.

Trees, hedges and forestry

Trees, hedges and forestry can provide numerous benefits. For example, they provide shade and privacy, can reduce the amount of carbon in the atmosphere ¹ and contribute to the protection and enhancement of biodiversity and the overall amenity of an area. However, they can sometimes be the source of disputes in neighbourhoods, for example if they become overgrown or dangerous. In addition, woodland creation or removal can be of interest or concern to individuals or communities.

This briefing summarises the main rules in Scotland which individuals and local authorities can use to deal with trees and hedges which are subject to dispute, and also the main rules on creating and removing forests and woodlands. It also outlines some of the ways in which the law protects trees.

The information in this briefing is a general overview of tree-related rules which is aimed at supporting the work of MSPs. It is not legal advice and shouldn't be relied on for that purpose. It also doesn't deal with some of the wider policy issues linked to trees and forests in Scotland (e.g. as regards climate change, reforestation, erosion, urban tree planting, biodiversity). Other SPICe briefings include a more general overview of forestry policy, including:

- [Land Use and Rural Policy Subject Profile](#)
- [The Multiple Roles of Scottish Woodlands](#)

Ownership of land and boundaries to property

The starting point in any dispute is to establish who owns the land where the tree or trees are situated and where the boundary between the properties is. This is because ownership of land also includes ownership of trees, shrubs, hedges etc. on the land and hence the legal responsibility for them. In addition, with some exceptions, the title to land generally covers the airspace above a property as well as the ground beneath it. The Stair Memorial Encyclopaedia, an encyclopaedia of the law in Scotland, states that:

“ ... landownership encompasses the ground itself and all that is part of the ground ... This includes the constituent materials of the ground — soil, stones, minerals and the like — and also trees, plants, buildings and other objects which, although above the ground, have acceded to it.”

Stair's Laws of Scotland (Stair Memorial Encyclopaedia) - Property - Part I: General law (Volume 18), para 198, 2023²

In many cases ownership of the land will be clear. However, there can also be cases where it is not clear who owns land, although there are methods which can help in discovering who the owner is (see below).

All land and buildings in Scotland will be registered in one of two publicly searchable property registers, the newer [Land Register](#), and the original [Register of Sasines](#), which is being slowly phased out. These registers are maintained by [Registers of Scotland](#) (RoS).

Some limited information from the Land Register is available free of charge, via a portal known as [ScotLIS](#). If a property appears in ScotLIS, the official documents relating to the property, the [title documents](#) (also traditionally called the title deeds), can be ordered via ScotLIS for a small fee.

In other circumstances, you can ask staff at RoS to search the property registers for a fee and order relevant title documents. For more information, see:

[Search land and property information - Registers of Scotland \(ros.gov.uk\)](#)

In some cases it can be helpful to contact staff at RoS before ordering a property search to find out what information they might need to carry out a search. For example, they may require the customer to submit a map of a particular scale with the boundaries of the area of interest clearly marked on it. RoS's contact details can be found on their website:

[Contact us - Registers of Scotland \(ros.gov.uk\)](#)

In some instances, there may still be issues for RoS with identifying ownership of a piece of land, due to the limitations of older title deeds. This is a particular problem with land which is still registered in the Register of Sasines. Even with properties registered in the Land Register, it is sometimes not possible to work out where a physical feature, such as a tree, is located within the legal boundaries shown on the map, due to the mapping scale used. This issue is particularly common in rural areas.

There can also be cases where there is ambiguity about where the boundary to a property lies. The general rule laid down by the courts is that, if the stem (i.e. trunk) of a tree is on

one side of the boundary, then it is owned by the owner of the land on that side.^{i 3 4} However, if the stem of the tree is on the boundary itself it will be "common property" with ownership shared between both landowners. If a tree is common property, it cannot be felled without the consent of the other landowner. The Stair Memorial Encyclopaedia states that:

“ Such trees ... cannot be uprooted by one party acting without the consent of the other, and nor, arguably, can branches be removed beyond normal acts of pruning.”

Stair's Laws of Scotland (Stair Memorial Encyclopaedia) - Property - Part I: General law (Volume 18), para. 179, 2023³

Legal advice on ownership, boundaries, and interpreting the title documents can be obtained from a solicitor.

ⁱ Hetherington v Galt (1905) 13 SLT 90.

What steps can be taken to resolve tree disputes? Informal and formal steps

After establishing who owns the land, the first step would normally be to try to resolve any issues informally with the neighbour in question before considering other remedies.

This is particularly important when the issue is related to a hedge as anyone applying for a high hedge notice under the High Hedges (Scotland) Act 2013 must have tried to settle the issue with their neighbour before making an application. The Scottish Government's guidance to local authorities contains details on what this involves.⁵

Mediation can also be worth trying in some circumstances, although its success requires the willingness of all the parties to a dispute to participate. Mediation is a process which involves an independent third party, such as a member of the local community or a professional mediator, helping two sides to come to agreement. The search facility of the [Scottish Mediation Network](#) allows people to search for local mediators, including those specialising in neighbour mediation.

If discussions with the neighbour are not successful, the next step would normally be to speak to the relevant local authority as they have a range of powers which may provide a solution, including the power to issue a high hedge notice under the High Hedges (Scotland) Act 2013.

There can, however, be situations where it is not possible to resolve a dispute informally or through a local authority. In these cases, legal advice from a solicitor or other legal adviser (for example, Citizens Advice Scotland) may be necessary as there are [various legal remedies which can be used to resolve tree disputes](#).

In some cases a letter from a solicitor reminding the neighbour of the relevant law may be sufficient to prompt action.

However, there are situations where it can be necessary for individuals to bring actions in the civil courts. It is important to note that this can be an expensive and uncertain process which does not necessarily guarantee success. In addition, court actions can aggravate relations with the neighbour in question.

The management of trees may also require the use of a professional arboriculturist or tree surgeon, e.g. through [the Institute of Chartered Foresters](#).

[A simplified flow diagram of the main steps which can be taken to resolve tree disputes can be found at the Annexe to this briefing.](#)

What areas of law are of importance in resolving disputes?

Broadly speaking, once ownership has been established, two areas of law are of importance to resolving neighbourhood disputes in relation to trees:

1. Local authority powers - for example, [high hedges legislation](#)
2. [Civil law](#) rules - for example, in relation to property rights, nuisance, negligence etc.

In addition, a range of statutory protections such as Tree Preservation Orders (TPOs) need to be taken into account.

These areas are dealt with in more detail below.

[As outlined above](#), if a dispute cannot be resolved informally, the first step would normally be to see if the relevant local authority may be able to help before considering civil law remedies.

What powers do local authorities have?

In contrast with the situation in England and Wales⁶ where local authorities have discretionary powers to do this under [section 23 of the Local Government \(Miscellaneous Provisions\) Act 1976](#), local authorities in Scotland do not have a general power to require property owners to remove trees or branches from their land, even in cases where trees are potentially dangerous.

Inverclyde Council's guide to dangerous trees states:

“ Local Authorities do not have a duty to investigate the condition of trees on land they don't own or occupy nor are they required to determine the ownership of land. The Council will only investigate land ownership where someone else's tree is causing a danger to a public road or other Council property.”

Inverclyde Council , 2021⁷

Local authorities do however have powers in the Roads (Scotland) Act 1984 to require the removal of trees where they could pose a danger to public roads or public footpaths.

[There are also powers in the High Hedges \(Scotland\) Act 2013 which local authorities can use to deal with high hedges which block light. This involves a resident making an application to the local authority for a High Hedge Notice and the local authority considering the application and deciding on any appropriate action.](#)

[In addition, the Town and Country Planning \(Scotland\) Act 1997 contains powers \(section 179\) which local authorities can use where the condition of land adversely affects the local area \(i.e. impacts negatively on amenity\).](#)

These statutory powers are outlined below.

[In situations where these statutory powers do not apply, neighbourhood disputes about trees will primarily be a civil law matter.](#)

Trees which are dangerous to public roads/ footpaths - Roads (Scotland) Act 1984

[Section 91 of the Roads \(Scotland\) Act 1984](#) ("1984 Act") gives local authorities in Scotland the power to serve a notice on private property owners requiring the removal of hedges, trees or shrubs where they are deemed dangerous to public roads or public footpaths. This covers situations where:

1. hedges, trees or shrubs overhang a public road or footpath and could cause a danger by obstructing the passage of vehicles or pedestrians or interfering with sight lines or lights; or where
2. dead or diseased hedges, trees or shrubs are likely to cause a danger by falling on a public road or footpath.

If the owner fails to comply, the local authority can carry out the work itself and recover the expenses reasonably incurred from the owner or occupier of the land (section 141 of the 1984 Act).

Likewise, if convinced of imminent danger the local authority may dispense with the notice procedure, carry out the work itself and recover expenses reasonably incurred from the owner or occupier of the land (section 91(3) of the 1994 Act).

High Hedges (Scotland) Act 2013

The High Hedges (Scotland) Act 2013 ("2013 Act") set up a scheme for dealing with disputes about the height of hedges which form a barrier to light.

It allows owners or occupiers of domestic properties to apply to their local authority for a "high hedge notice" where the height of a hedge on someone else's land:

“ adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have.”

High Hedges (Scotland) Act 2013, section 2 , 2013⁸

To have their applications accepted, applicants have to provide evidence that they have taken "all reasonable steps" to resolve the matter.ⁱⁱ At the very least, applicants will therefore have to show that they have tried to settle the issue with their neighbour(s) before applying (for details see paragraphs 16-20 of [the Scottish Government's revised guidance to local authorities on the 2013 Act](#)). [The guidance](#) states in particular that:

“ 16. Anyone considering applying for a high hedge notice must have tried to settle the issue with their neighbour before making an application. If a local authority receives an application where there is no evidence that the applicant has tried to do this, they must reject it. The steps people should have taken before applying to the local authority will depend on the circumstances of the case. However, it is not enough for an applicant to simply claim that their neighbour is unapproachable.”

Scottish Government, 2019⁵

In addition, applicants also have to demonstrate that the dispute relates to a "high hedge". This term is defined in section 1 of the 2013 Act as a hedge which:

- is formed wholly or mainly by a row of 2 or more trees or shrubs,
- rises to a height of more than 2 metres above ground level, and
- forms a barrier to light.

A high hedge will not, however, be regarded as forming a barrier to light if it "has gaps which significantly reduce its overall effect as a barrier to light at heights of more than 2 metres" (section 1(2) of the 2013 Act). The density of foliage above 2 metres will therefore be crucial to whether a hedge is covered by the legislation (in many cases this will rule out the application of the legislation to rows of trees).

The term "hedge" itself is not defined in the legislation and depends on the facts. [The Scottish Government's revised guidance to local authorities](#) explains that the legislation is not designed to affect woodland and forests and that trees would only be covered if they can be considered to be a "hedge" (assuming the other conditions are met). It further

ii Section 3 of the 2013 Act

explains that the following criteria would be relevant in assessing whether something is a hedge:

“ 49. In order to establish if trees and shrubs form what is commonly recognised as a hedge, local authorities should consider a number of criteria when making their assessment. The following criteria may assist in determining if trees and shrubs constitute a hedge. These criteria are not tests and should be viewed as things that may be useful for local authorities to consider to help make a decision but it is not expected that every hedge would meet these criteria;”

- The spacing of trees and shrubs consistent with hedge planting”
- The past and current management of trees and shrubs”

Scottish Government, 2019⁵

If the local authority is of the view that the owner needs to take action regarding a high hedge, they are required to issue a high hedge notice (section 8(1) of the 2013 Act). This enforces the local authority's decision and sets out the action the hedge owner must take to comply with the law (the contents of the notice are defined in section 8(2) of the 2013 Act). Failure to comply with such a notice allows the authority to carry out the work itself, recovering the costs from the hedge owner (sections 22-30 of the 2013 Act).

There is a right to appeal the decision of a planning authority in respect of high hedge cases in certain circumstances - for details see the Scottish Government document '[High hedge appeals: form and guidance](#)'.

More information on how the scheme works can be found in [the Scottish Governments revised guidance to local authorities](#) ⁵ and in the [short summary of the rules on the website of the Scottish Government](#) ⁹. Local authorities also have information on how to apply for a high hedge notice on their websites.

[Citizens Advice Scotland also has advice on its website on what to do if a neighbour's hedge or trees are blocking light to someone's home or garden.](#) ¹⁰

Town and Country Planning (Scotland) Act 1997 - amenity notices

Local authorities have powers in section 179 of the Town and Country Planning (Scotland) Act 1997 ("1997 Act") which they can use where the amenity of an area is threatened.

Under these powers, if a local planning authority is of the view that the amenity of any part of the district is being adversely affected by the condition of any land, it can serve a notice on the owner or occupier of the land requiring them to take action to abate the adverse effect. These are known as waste land or amenity notices.

Section 135 of the 1997 Act allows the planning authority to enter the land and take the action specified in the amenity notice where the person named in the notice fails to take remedial action by the required date. The authority can recover the costs incurred in taking this action.

There is no criminal sanction linked to failure to comply with an amenity notice and a landowner or occupier can appeal to the Scottish Ministers against the imposition of an amenity notice.

Amenity notices are not normally issued in response to overgrown trees alone. However, they can be used where gardens are very untidy or, for example, used to store waste.^{11 12} They can therefore be relevant in certain limited cases.

The power is, however, a discretionary one and will only be used by local authorities where the problem is a serious one. Glasgow City Council's Planning Enforcement Charter states that:

“ Such a notice will normally only be used where serious disamenity is caused to the wider area, not for relatively minor instances of untidiness such as poor maintenance of garden lawns.”

Glasgow City Council , 2022¹³

Statutory nuisance

Local authorities also have powers under the Environmental Protection Act 1990 ("1990 Act") to deal with what are referred to as “statutory nuisances” emanating from "premises" (i.e. land). If a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, it must serve an abatement notice (e.g. requiring the nuisance to stop). In principle, the rules on statutory nuisance can apply to tree disputes. However, this would depend on the facts and whether the test for statutory nuisance is met.ⁱⁱⁱ

Statutory nuisances are defined in section 79 of the Act and cover eleven specific nuisances such as noise, smoke, fumes etc. which can be a statutory nuisance if they are either:

1. a nuisance; or
2. prejudicial to health.

This also includes a catch-all statutory nuisance where premises are "in such a state as to be prejudicial to health or a nuisance."

Nuisance isn't defined in the 1990 Act, but largely has a similar meaning as in [common law nuisance](#). However, unlike common law nuisance, the statutory regime is not focused on property rights or damage to property. Instead a statutory nuisance has to affect someone's personal comfort in a material way.^{iv} Guidance on statutory nuisance from the Scottish Government states that:

iii See R. (On the Application of Anne) v Test Valley Borough Council [2001] EWHC 1019 (Admin)

iv Wivenhoe Port Ltd v Colchester Borough Council 1985 [1985] 1 WLUK 708

“ 3.9 There are three significant differences between common law nuisance and statutory nuisance:- a) for a statutory nuisance to occur there must be a common law nuisance; however not all common law nuisances would amount to a statutory nuisance (*NCB v Thorne 1976*). b) the statutory nuisance regime, unlike common law nuisance does not deal with harm to property; a statutory nuisance must interfere with personal comfort in a manner that affects their wellbeing for example dust affecting cars would not be nuisance but the same dust in a person's eyes or hair would interfere with personal comfort even if there were no adverse health impact (*Wivenhoe Port Ltd v Colchester Borough Council 1985*). c) there is no requirement for a person to have any property rights as for a common law private nuisance - a statutory nuisance protects people not property (*Hunter v Canary Wharf Ltd 1997*).”

Scottish Government, 2009¹⁴

What are tree preservation orders (TPOs)?

Tree preservation orders (TPOs) are part of the Scottish planning system and are one of the key methods of protecting specific trees, groups of trees or woodland from damage or destruction.

The rules on TPOs are governed by the Town and Country Planning (Scotland) Act 1997 ("1997 Act") as amended and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 ("2010 Regulations").

Local planning authorities have powers under Section 160 of the 1997 Act to make a TPO where they are of the view that:

- it is expedient in the interests of amenity to do so; or that
- the trees, groups of trees or woodlands are of cultural or historical significance.

The planning authority will assess, either on its own initiative or after being contacted by members of the public, whether the tree(s)/woodland in question are worthy of being protected by a TPO on the basis of either of the rules mentioned above. In practice this will involve a site visit or series of visits which will involve, amongst other things, assessing the physical conditions of the trees, their contribution to the surroundings and whether they are under threat.

If the planning authority is of the view that the trees are worthy of protection it can make a TPO. A TPO must define the position of the trees, groups of trees etc. in question and must include a map which is of sufficient scale to give a clear indication of the position of the trees (regulation 3 of the 2010 Regulations).

If a planning authority is of the view that a tree should be protected it will write to the tree owner and other interested parties serving notice of the new TPO. The TPO will also be advertised in the local press. Anyone may make an objection or comment in writing to the planning authority within 28 days of the date of the advertisement (regulations 4 and 5 of the 2010 Regulations).

Planning authorities have a general right to revoke or vary TPOs with the procedure for doing this largely following those for making a TPO. Planning authorities are also required to review existing TPOs and to consider whether they should be varied or revoked (section 159 of the 1997 Act). The rationale is that individual trees and woodlands are under continuous change, and that accurate and up to date information is needed to ensure that the rules can be enforced.

TPOs can have a wide scope and can include provisions:

- prohibiting the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees except with the consent of the planning authority (these are usually the core provisions in a TPO);
- to secure the replanting of any part of a woodland area felled in the course of forestry operations permitted by or under a TPO; or

- applying a TPO to trees planted pursuant to a condition in a planning permission.

Where a TPO exists, it is an offence to damage, destroy etc. the tree(s) or woodland in question without written consent from the planning authority (section 171 of the 1997 Act). The offender can also be required to pay for a replacement tree of similar size and species to be planted in the same location. It is therefore crucial to check whether a TPO exists before pruning branches or cutting down a tree.

If work is needed on a tree which is protected by a TPO, consent to do this can be requested from the planning authority. Applications have to be made through [the Scottish Government's e-planning portal](#) and have to include details of the trees, the proposed work, and the reasons for the work (regulation 9 of the 2010 Regulations). An appeal can be made to the Scottish Ministers within the deadline specified by the TPO.

There can be situations where a tree protected by a TPO needs to be removed urgently (e.g. because a tree poses an immediate danger). The legislation includes certain exceptions which allow for the pruning or cutting down of such trees without first seeking consent from the planning authority (section 160(6) of the 1997 Act). However, notice in writing has to be given to the planning authority as soon as practicable. It will also be necessary to demonstrate that the work is necessary as otherwise the planning authority may take an enforcement action. [Edinburgh Council's guidance note on protected trees](#) explains, for example, that:

“ If the tree works are required immediately for safety, they may go ahead, but you must be able to demonstrate that the works were absolutely necessary. You may only undertake the minimum amount of work necessary to remove the danger. For example, a tree may not be felled if removal of a branch would have been sufficient to make it safe. You are advised to collect evidence such as an arborist's report, photographs and an independent witness statement and you must notify the planning authority as soon as possible on the ePlanning Portal.”

City of Edinburgh Council , 2022¹⁵

More information on TPOs can be found on local authority websites. Local authorities keep a register of trees protected by TPOs and it is generally possible to search for them in online maps on local authority websites.

Further information on TPOs can also be found in the [Scottish Government's Planning Circular 1 2011 on Tree Preservation Orders](#).

What are the rules in conservation areas?

Conservation areas are areas of "special architectural or historical interest the character or appearance of which it is desirable to preserve or enhance".^v Conservation areas are used to protect certain buildings, forms of architecture etc. and also trees.

They are designated by local planning authorities and, in certain circumstances, Historic Environment Scotland. There are more than 600 conservation areas in Scotland.¹⁶

Trees in conservation areas which are already protected by a TPO are subject to the normal TPO controls. However, it is also an offence to carry out work on trees in conservation areas, whether protected by a TPO or not, unless consent is given by the planning authority or the authority has been given six weeks' notice and has not responded (section 172 of the Town and Country Planning (Scotland) Act 1997).

^v Section 61 Planning (Listed Building and Conservation Areas) (Scotland) Act 1997

What are the rules on planning and trees?

The Scottish Government sets out its overarching policy on planning and trees in National Planning Framework 4 ¹⁷ (NPF4) policy 6, which states:

“ a) Development proposals that enhance, expand and improve woodland and tree cover will be supported. b) Development proposals will not be supported where they will result in: i. Any loss of ancient woodlands, ancient and veteran trees, or adverse impact on their ecological condition; ii. Adverse impacts on native woodlands, hedgerows and individual trees of high biodiversity value, or identified for protection in the Forestry and Woodland Strategy; iii. Fragmenting or severing woodland habitats, unless appropriate mitigation measures are identified and implemented in line with the mitigation hierarchy; iv. Conflict with Restocking Direction, Remedial Notice or Registered Notice to Comply issued by Scottish Forestry. c) Development proposals involving woodland removal will only be supported where they will achieve significant and clearly defined additional public benefits in accordance with relevant Scottish Government policy on woodland removal. Where woodland is removed, compensatory planting will most likely be expected to be delivered. d) Development proposals on sites which include an area of existing woodland or land identified in the Forestry and Woodland Strategy as being suitable for woodland creation will only be supported where the enhancement and improvement of woodlands and the planting of new trees on the site (in accordance with the Forestry and Woodland Strategy) are integrated into the design.”

The policies set out in NPF4 now form part of every development plan, sitting alongside the policies and proposals set out in local development plans produced by Scotland's planning authorities. Where there is an incompatibility between policies set out in NPF4 and a local development plan, whichever of them is the later in date is to prevail. Given that NPF4 was formally adopted on 13 February 2023 and that any new or revised local development plan must take into account its contents, policy conflicts are unlikely to arise.

The Scottish Government also has [a long-standing policy on the control of woodland removal](#), which may be applicable in relation to the planning process. [More information on felling can be found in a later section of this briefing.](#)

What civil law remedies exist?

If a dispute cannot be resolved informally with the neighbour or through the relevant local authority, then there are various legal remedies which may be an option for trying to resolve the issue.

It is important to note that disputes about trees are primarily a [civil law](#) matter and are normally not a matter for the police. Unless the dispute also involves a crime (e.g. an act of violence such as an assault or certain forms of criminal damage such as deliberate destruction of a protected tree),¹⁸ there would normally not be a role for the police or the criminal courts.

A range of civil law rules are relevant where there is a dispute in relation to trees (e.g. rules in relation to property rights, nuisance, negligence etc.). These rules are based on what is known as the "common law" rather than statute, i.e. the law based on court decisions.

The onus is on the individuals involved to assess what their rights and obligations are under the civil law rules (there isn't a statutory body which does this). [Local Citizens Advice Bureaux](#) can potentially provide free legal advice as can [the Citizens Advice Helpline](#).

In some cases a letter from a solicitor reminding the neighbour of the relevant law may be sufficient to prompt action.

However, there are situations where it can be necessary for individuals to bring actions in the civil courts.

Legal advice and support would normally be needed if an individual intends to bring a court action. [The website of the Law Society of Scotland has a "Find a Solicitor" function which lets people search for solicitors in Scotland based on location and/or expertise.](#)¹⁹

Typical remedies (outcomes of a case) that can be granted where a civil court action is successful include:

- 'interdict' (a court order preventing a named individual from doing something);
- 'implement' (a court order compelling a named individual to do something); and
- damages (compensation for loss).

It is important to note that, unless all, or part of, the costs are covered by legal aid, civil court actions can be expensive and, as with any court action, there is no guarantee of success. For more information on legal aid, see [the SPICe briefing "Legal aid - how it works"](#).²⁰ In addition, court actions can potentially aggravate relations with the neighbour in question.

Encroachment - tree roots and branches

One of the most common disputes involves tree roots or branches which extend into someone else's property.

The law known as "encroachment" is key in such disputes as it covers situations where something intrudes across a property's boundary into another property. The Stair Memorial Encyclopaedia defines encroachment as:

“ ... the permanent or quasi-permanent intrusion into land which is owned or otherwise lawfully possessed by another person.”

Stair's Laws of Scotland (Stair Memorial Encyclopaedia) - Property - Part I: General law (Volume 18), para. 175 , 2023²¹

It also explains that even a limited intrusion into another property can be an encroachment and that there is no need to prove harm, although the level of harm may be relevant for any remedy granted by a court. ²¹

Encroachment includes the airspace above a property as well as the ground beneath it. It can, therefore, cover trees which extend into someone else's property, for example overhanging branches or roots which cross the boundary of a property.^{vi}

As a result it is possible to challenge an encroachment through the civil courts and to request the court to order branches/roots to be removed. In addition, 'self-help' is also possible. In other words, provided a tree isn't a protected one (e.g. through a [TPO](#)), it may be possible to trim a neighbour's overhanging tree branches or to remove the roots back to the boundary of the property. ³ Any branches, roots, foliage etc. which are removed would, however, remain the property of the tree's owner ³ and would in principle have to be returned.

There can, however, be significant risks with self-help, or with following the letter of the law in a narrow manner. In the first place, such an approach can potentially make relations with a neighbour worse as there will often be a view that a degree of encroachment is acceptable, particularly in cases where trees/hedges don't block light or create a nuisance. Also, if the matter ends up in court, the court may not agree that there has been an encroachment, meaning that there could be liability for damage to the neighbour's tree.

If pruning is carried out without the owner's permission it will also be important not to enter the property in question, or for equipment to cross the boundary, as the self-help rules do not provide a right of entry to a neighbour's property.

Removing roots can also involve risks. As explained in a blog by the law firm Brodies:

“ While in theory, as with branches, a landowner has the right to remove the roots simply because they are on or in his land, even if they are causing no damage, doing so in the absence of any real need could be looked at negatively by the authorities if the result is damaging to the tree as a whole. There is greater chance of damage to the tree, or buildings within close proximity, when dealing with roots - so it is best practice to involve a professional. Cutting the roots may affect the stability of the tree and if it subsequently falls and causes damage, this could result in a claim against you.”

Brodies, 2019²²

vi Halkerston v Wedderburn - 1781 Mor 10495

Common law of nuisance

The common law of nuisance can be relevant to tree disputes as it places limits on property owners' rights. Although property owners generally have the right to the free use of their property, they have to ensure that they do not disturb or intrude upon their neighbours' enjoyment of their property

The test for common law nuisance is complicated and is not the same as the colloquial meaning of the term "nuisance". According to the Stair Memorial Encyclopaedia, the key test is as follows:

“ An invasion of an interest in the use and enjoyment of land will only be actionable under the distinctive test for nuisance if the invasion is so unreasonable that the complainer should not be required to tolerate it.”

Stair's Laws of Scotland (Stair Memorial Encyclopaedia), 2023²³

Whether there is a common law nuisance will depend on the facts and will involve weighing up factors such as the extent of the harm involved, the nature of the locality in question and the practicality of taking remedial measures.^{24 25} A key factor will be whether a reasonable person would tolerate the nuisance caused.²⁶

Title deeds and title conditions

The [title deeds](#) to properties are the legal documents associated with ownership held by [Registers of Scotland](#) (they can be obtained from [the owner's mortgage lender/solicitor or Registers of Scotland](#)).

Title deeds sometimes include "title conditions" (also known as "burdens") which impose obligations on one property designed to benefit another property. If constituted properly, title conditions can survive changes of ownership (e.g. the sale of a property).

Title conditions can require property owners not to do certain things, for example not to cut off a neighbour's light or view. In addition, they can also require a property owner to do something, for example, to maintain the property in good condition for the benefit of neighbouring property owners. Both types of title conditions can be relevant where there is a dispute about trees.

Actions for breaches of title conditions can be brought in the civil courts by people with enforcement rights. Neighbouring property owners can potentially have enforcement rights although there are complex legal rules for establishing this.²⁷

If title conditions do include relevant obligations, it is recommended that they are examined by a solicitor who can provide legal advice on their scope and whether they can be enforced by neighbours.

Dangerous trees - duty of care

Another common dispute relates to trees which pose a potential danger to property,

neighbours and passers-by due to disease or age.

As indicated, with the exception of situations where trees are deemed dangerous to public roads or public footpaths, local authorities in Scotland do not have a general power to require property owners to deal with dangerous trees. It is therefore the owner of the land who normally has the main responsibility for dealing with dangerous trees.

This is because the owner of the land can be held liable under the general law of negligence (known as 'delict') and also under rules in [the Occupiers Liability \(Scotland\) Act 1960](#).²⁸ If a tree falls down or loses branches and this causes damage/injury then the landowner could be held liable under these rules.

Assessing risks is a complex matter but will largely depend on whether the damage could 'reasonably have been foreseen'. This will depend on the facts, although, in very general terms, risks are more likely where a tree has obvious signs of disease or structural weakness than in cases where a tree is healthy.

If someone is of the view that a tree could be a danger to people or to property, then in the first instance they should discuss the matter with the owner of the land where the tree is situated.

Landowners with trees on their land which are frequently visited by the public, e.g. golf courses, local authority parks etc., will often carry out detailed risk assessments on the dangers posed by trees on their land. These risk assessments can be a useful point of discussion in situations where there is a dispute about dangerous trees.

Further information on risk assessments can be found on [the website of the National Tree Safety Group](#) (the document is not drafted from a Scots law perspective but still provides useful information).²⁹

Further information on occupiers' liability can be found in [Scottish Natural Heritage's 2018 guide to occupiers' legal liabilities in Scotland in relation to public outdoor access](#)³⁰ (Scottish Natural Heritage is now known as [NatureScot](#)).

Trees blocking light

Disputes can often arise because trees block light to neighbours' homes or gardens.

In Scotland neither the common law nor statute provide a general right to light.^{31 32}

This is in contrast to England and Wales where properties can benefit from a right to light through private property rights known as "easements", or through the passage of time in a process known as "prescription" (i.e. enjoyment of the light for at least twenty years without interruption/consent).^{33 32}

In Scotland, where the trees in question fit the definition of a "hedge" in the [High Hedges \(Scotland\) Act 2013](#), it is possible that disputes about trees blocking light can be addressed through the high hedges legislation.

In other cases, there can be situations where disputes about trees blocking light can be addressed by using the civil law remedies mentioned in this briefing.

The legislation on tenements can also be relevant to disputes about light as section 9(1)(b) of the Tenements (Scotland) Act 2004 restricts the owners or occupiers of any part of a tenement from doing anything reasonably likely to impair to a material extent the natural light enjoyed by any part of the tenement building.

What are the rules on planting and felling trees?

Both planting and felling trees generally require different permissions, though there are exceptions.

Who is responsible for forestry?

[Scottish Forestry](#) is the Scottish Government agency responsible for policy, regulation and support for forestry. Forestry grant enquiries, woodland creation or tree felling enquiries should be directed to [the local Scottish Forestry Conservancy Office](#).

[Forestry & Land Scotland](#) is the Scottish Government agency responsible for managing Scotland's nationally owned forests and land.

[As noted in previous sections](#), certain tree-related issues are the responsibility of the local authority. Questions about, for example, tree preservation orders, trees in relation to planning permission, hedges, or street trees should be directed to the local authority in the first instance.

Is planning permission required for forestry work?

While [planting](#) or [felling](#) trees generally require certain permissions, planning permission through the local authority planning system is not normally required for forestry work (i.e. tree planting, felling or management).

However, planning permission would normally be required for things like processing infrastructure, toilet blocks and car parks. Some other developments, such as mountain bike trails in woodlands, [may also need planning permission](#).

Forest tracks/private ways are usually covered by what is known as 'permitted development', where planning permission is not required. However, prior to the formation or alteration of agricultural or forestry private ways, the developer or landowner must notify the relevant planning authority to find out if the proposal is permitted development or if prior approval is required. This process is known as 'prior notification'. [There is a guidance note on 'prior notification' available from Scottish Forestry](#).

Planting trees

The requirements for planting new forests and woodlands depend on the size and location of the proposed site. Responsibility for this lies with [Scottish Forestry](#).

Scottish Forestry recommends that anyone looking to create new woodland should follow its [woodland creation guidance](#) (a flow chart of the process is set out on p.11 of the guidance). Anyone looking to create woodland is also encouraged to [speak to Scottish Forestry](#).

As a first step, the guidance expects all new woodland creation projects to prepare an initial proposal and to carry out due diligence. The due diligence phase includes initial conversations with neighbours and other affected stakeholders.

What is formally required beyond this point depends on the size and the location of the proposed site, and whether the applicant is seeking grant funding.

Environmental Impact Assessment

Under the [Forestry \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#), woodland planting projects over certain threshold sizes are required to be screened by Scottish Forestry to assess whether a full Environmental Impact Assessment (EIA) is required.

Whether or not a so-called 'screening opinion' is required depends on whether any part of the proposed site is in a 'sensitive area'. Sensitive areas are:

- Sites of special scientific interest (SSSI; a specific type of designated site for nature)
- Land subject to a nature conservation order under [Section 23 of the Nature Conservation \(Scotland\) Act 2004](#)
- An area classified as a national park
- A UNESCO World Heritage Site
- A scheduled monument
- A National Scenic Area (NSA) designated under [263A of the Town and Country Planning \(Scotland\) Act 2006](#)
- A 'European Site' ([previously known as a Natura Site](#)) designated under regulation 10 of the [Conservation \(Natural Habitats etc.\) Regulations 1994](#). These are 'Special Protection Areas' or 'Special Areas of Conservation'
- Areas with deep peat soil which is organic soil containing more than 60 per cent of organic matter and exceeding 50 centimetres in thickness.

[More information on sensitive areas can be found on Scottish Forestry's webpages.](#)

If no part of the proposed woodland planting site is within a sensitive area, a screening opinion is only required for projects over 20 hectares (ha).

However, if 2ha or more of the proposed site is located in a National Scenic area, or any part of the proposed site is located within any other type of sensitive area, a screening opinion is required. In other words, apart from National Scenic Areas which have a slightly higher threshold, all projects which are wholly or partially located within a sensitive area require a screening opinion.

Some projects which do not meet the threshold may also require a screening opinion if Scottish Forestry consider that it is an 'exceptional circumstance' which is likely to have a significant impact on the environment.

Where the screening process finds that there is likely to be significant environmental impacts, a full EIA report is required to inform formal consent from Scottish Forestry.

Scottish Forestry's [Woodland Creation Application Guidance](#) and [Scottish Forestry's webpages on applying for consent](#) include more information on the process involved.

This process includes further stakeholder engagement and a 30 day public consultation. [Scottish Forestry's consultation procedures are detailed in their guidance.](#)

Grant funding

If the woodland creation proposal involves grant funding under the [Forestry Grant Scheme](#) there are other requirements. [Details of the different funding options, eligibility, and application requirements](#) can be found on the Rural Payments and Inspections Division's website. This is the Scottish Government department that administers grant funding for rural development.

[Any application for grant funding is placed on a public register](#) for comment for 28 days if the woodland creation proposal exceeds 2ha, unless it has already gone through the Environmental Impact Assessment procedure.

Projects over 100ha require a [Long Term Forest Plan](#) in order to apply for grant funding. Long Term Forest Plans are strategic management plans that provide approval for felling and thinning within a forest for a period of 10 years. They are also placed on a public register for comment for 28 days.

Felling trees

Trees may be felled for a number of different reasons, including as part of normal forestry operations, as part of development plans, or for safety reasons.

In general, a 'felling permission' is required to cut down trees. However, there are some exemptions to this rule; for example, a felling permission is not needed for felling trees in gardens (so may not be relevant in disputes between neighbours, for example).

Authorities may also require a person to fell a tree. This is called a 'felling direction'.

Getting permission to fell trees

In general, a ['felling permission' is required to cut down trees](#). The relevant legislation is [the Forestry and Land Management \(Scotland\) Act 2018](#).

The [process for applying](#) for a felling permission is set out on Scottish Forestry's website. [Scottish Forestry's Felling Permission Application Guidance](#) includes useful information on the process and requirements.

[There are some exemptions to the requirement](#) to obtain a felling permission. You may fell:

- Up to five cubic metres of timber within any set calendar quarter (1 Jan- 31 Mar; 1 Apr-30 Jun; 1 Jul-30 Sept; 1 Oct-31 Dec). However, this exemption **does not apply** in native broadleaved woodland sites between 0.1 and 0.5 hectares inclusive (i.e. smaller native woodlands). This is to protect smaller areas of native woodland where gradual removal would be detrimental. The exemption also **does not apply** on

[Caledonian Pinewood Inventory Sites.](#)

- Any trees with a **diameter at breast height** (1.3m from the ground) of **10 cm or less**.
- Trees in **orchards, gardens, churchyards, burial grounds and public open spaces**.
- A tree where necessary for the **prevention of immediate danger** to persons or property.
- **Dead trees**; note that they must be completely dead. Trees that are starting to die or are blown over are not exempt.
- Elm trees affected by **Dutch Elm Disease** and where the greater part of the crown is dead.
- Trees where felling is required for **development granted by planning permission** (planning consent must be formally approved for this to apply).
- Trees on **land occupied by a 'statutory undertaker'** (a person authorised to carry out works on public infrastructure like roads, railways, and canals) and at the request of a statutory undertaker which are obstructing or interfering with the construction or maintenance of their work.
- Where it is required **by order of a court or tribunal** or by **any enactment**.
- Trees on land subject to certain **Dedication Agreements**. Dedication agreements were agreements between landowners and the previous Forestry Commissioners that the land would be managed for forestry. It is not possible to enter into new dedication agreements, but exemptions continue to exist for existing agreements.
- Trees by, or at the request of, **Scottish Water**, where the tree interferes or may interfere with the functions of Scottish Water.
- A tree by, or at the request of, **a local authority**, where done in accordance with the local authority's functions under the **Flood Risk Management (Scotland) Act 2009**.
- A tree by, or at the request of, **an electricity operator**, where the tree is in close proximity to an electric line or electrical plant and where it is causing obstruction or interference or presents a source of danger.
- A tree covered by a **Tree Preservation Order** , where consent to fell has been granted by the local authority.

Further details on exemptions can be found in [Appendix 1 of Scottish Forestry's guidance](#).

Unless one of the exemptions applies, it is an offence to fell trees without permission. [Unauthorised felling can be reported to Scottish Forestry](#).

Felling permissions are assessed against the [UK Forestry Standard](#), the standard developed by the UK forestry agencies and which all foresters and woodland managers are expected to follow.

[Felling permissions may include conditions](#). For example, where a person proposes to clearfell (i.e. remove all the trees), selectively fell or fell individual trees there will normally

be conditions to ensure that trees are replanted within a specified timescale (usually two years, or longer for natural regeneration or if other special conditions apply) and to maintain those trees until they are successfully established. Other conditions may be included to mitigate the impact on communities, individuals, the environment, or overall woodland cover.

If a person is planning to fell trees and not replant them or use the land for another purpose, the proposal will be assessed under [Environmental Impact Assessment \(EIA\) regulations for forestry](#), and against the [Scottish Government's Control of Woodland Removal Policy](#). Projects which propose to remove woodland for the purpose of converting the land to another use must apply for a 'screening opinion' to determine whether a full EIA is required if:

- any part of the site is in a 'sensitive area' (aside from National Scenic Areas, where the threshold is 0.5 ha), or
- the proposed area is greater than 1 ha under any other circumstances.

What is considered to be a 'sensitive area' is covered in [the previous section on tree planting](#), and in [Scottish Forestry's guidance on EIA](#).

There may be requirements under [other legislation which restricts tree felling](#), such as acts which protect wildlife, or where a [Tree Preservation Order](#) is in place. It is, for example, unlawful to disturb nesting birds. This is covered further in [the section on wildlife management](#).

Being required to fell a tree

A person may be required to fell a tree on their land.

If it appears to Scottish Ministers (with authority delegated to Scottish Forestry) that trees must be felled to prevent deterioration in the quality of timber, to improve growth of other trees, or to prevent harm caused by the trees, [they may issue a 'felling direction'](#).

Specific rules apply if those trees are covered by a [Tree Preservation Order](#).

It is an offence to fail to comply with a felling direction.

Finding information

Many forestry activities are subject to consultation requirements, and applications can be found online. [A range of information is available in Scottish Forestry's public registers](#).

Details of applications for the Forestry Grant Scheme and applications for felling permissions can be found on [Scottish Forestry's casework search portal](#).

Note that if a particular area does not appear on the register, it does not necessarily mean that there is no permission to fell trees. Land managers can also get felling permission through, for example, the approval of Long Term Forest Plans and Land Management Plans. These plans may be available to view through the [Register of felling permission](#)

[proposals within Forest Plan applications](#).

Environmental impact assessment applications are also open for public comment at various stages in the process. [These applications can be found on a separate register](#).

[Scottish Forestry's Open Data Portal](#) allows members of the public to view, query and download a wide variety of geographical information.

[Land Information Search \(LIS\)](#) can be used to search for information about specific parcels of land. For instance, it will tell you which Scottish Forestry conservancy area a specific piece of land is in, or if it has any designations.

Finally, Forest Research produce [annual forestry statistics](#).

What are the rules on trees and wildlife?

In general, Scottish Ministers have a duty to promote sustainable forest management under the [Forestry and Land Management \(Scotland\) Act 2018](#). For individual forest managers, [the UK Forestry Standard \(UKFS\)](#) sets out requirements and guidelines for sustainable forest management. Compliance with the UKFS is a prior condition for getting grant support and permission to fell and plant trees in Scotland.

In addition, woodland operations may be subject to specific restrictions to protect wildlife.

It is a criminal offence under the [Wildlife and Countryside Act 1981](#) ('the 1981 Act') to intentionally or recklessly kill or injure a wild bird; take, damage, destroy or interfere with a nest of a wild bird while it is in use or is being built; obstruct or prevent a wild bird from using the nest; and to take or destroy an egg of a wild bird. Care must be taken to ensure that nests are not destroyed or disturbed during woodland and forestry operations. As a general rule, [Scottish Forestry therefore note that major operations](#), such as thinning and felling near known nest locations should take place outside the main nesting season.

This applies equally to trimming or cutting hedges. Unlike in England and Wales which have specific legislation under [the Hedgerow Regulations 1997](#), there is no specific legislation governing hedgerows in Scotland nor a specific offence relating to the removal of hedgerows. However, removing a tree or hedgerow at the wrong time of year may be captured under the above offences in the 1981 Act, and is regulated in other ways, [for example as part of farming operations. Farmers are not permitted to cut hedgerows or trim trees between 1 March and 31 August.](#)

Similarly, rules apply to badgers and badger setts (the underground dens where badgers live) under specific legislation and to a wide range of protected species under the 1981 Act and the [Conservation \(Natural Habitats, etc.\) Regulations 1994](#) ('the 1994 Regulations')

It is an [offence to kill or injure a badger or interfere with badger setts](#). Setts are typically found in woodland, and can be disturbed or collapsed by forestry operations. [Guidance produced by Forest Research](#) following the passage of the Protection of Badgers Act 1992 suggests a protection zone of a minimum of 20 metres around a sett and to avoid forestry operations in the breeding season (December-June) wherever possible.

[It is possible to apply to NatureScot for a 'standard forestry operations licence'](#) which permits, subject to conditions, forestry operations within 20 metres of a badger sett between 1 July and 30 November.

Finally, it is an offence to:

- disturb specially protected birds (Schedule 1,1A,A1 of the 1981 Act) whilst breeding, or at lek sites (the breeding sites of certain bird species, like [capercaillie](#) or [black grouse](#)), or in certain other circumstances;
- kill or injure other specially protected animals (1981 Act, Schedule 5) or destroy, damage or obstruct access to a structure or place used for their shelter or protection;
- disturb a specially protected animal species (1981 Act, Schedule 5) while it is occupying a structure or place used for shelter or protection;

- damage or destroy a breeding site or resting place of a European protected species of animal (1994 Regulations Schedule 2);
- disturb a European protected species of animal (1994 Regulations Schedule 2);
- pick, uproot or destroy any specially protected plant species (1981 Act, Schedule 8), and European protected plant species (1994 Regulations, Schedule 4) including their seed or spore; and
- uproot/destroy any other wild plants without permission from the landowner or other authorised person.

(Source: Scottish Forestry general guidance note on '[Forest Operations and Wildlife in Scottish Forests](#)')

Forestry operations must take care to avoid harmful impacts on protected species. Licences to allow potentially damaging activities to proceed are only available for a limited number of purposes. This does not include general forestry operations but [licences can be granted to, for example, prevent serious damage to growing timber](#).

[Scottish Forestry provide a range of guidance notes](#) to help woodland managers comply with species protections for a variety of species.

What other sources of information exist?

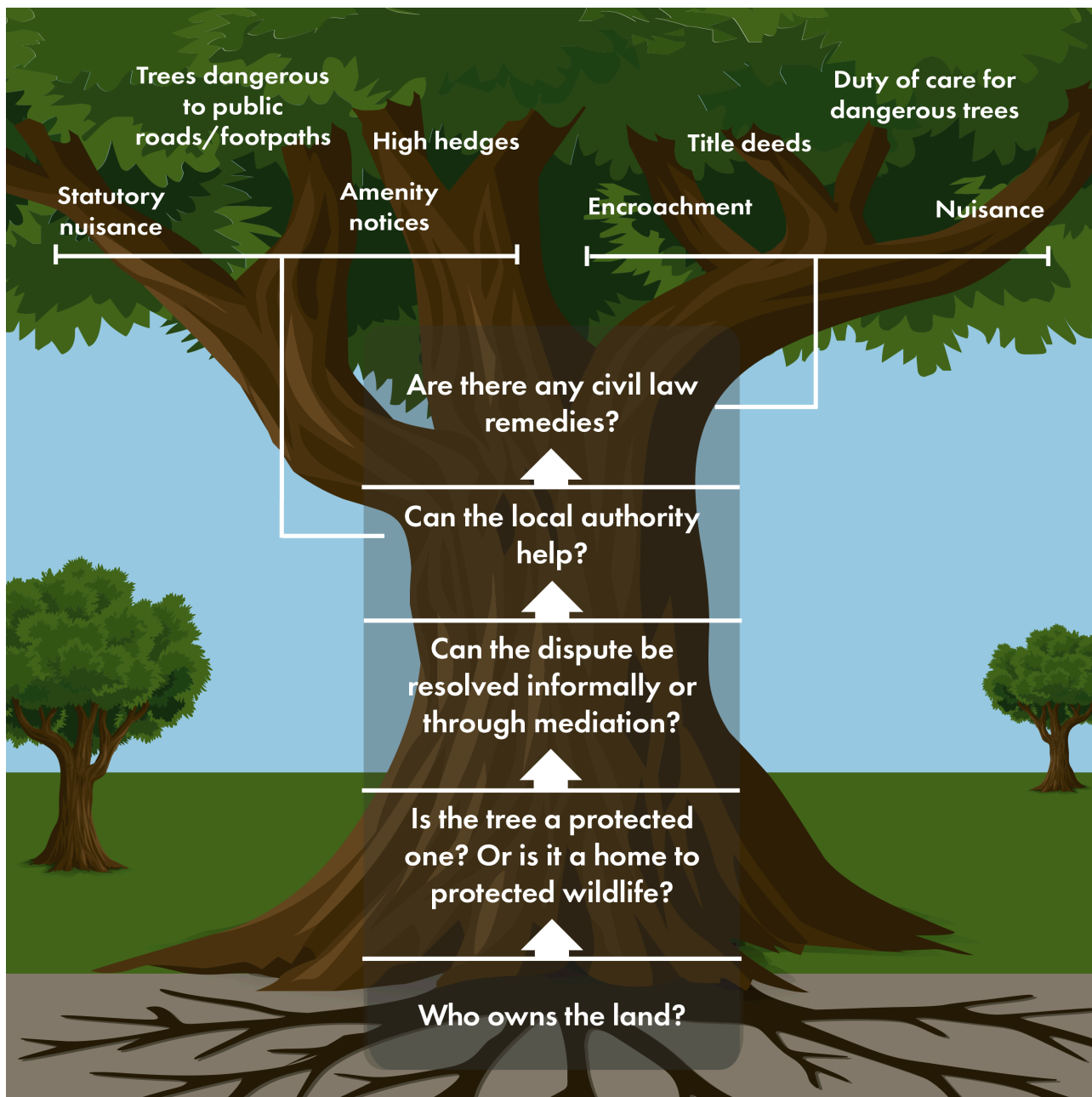
Other sources of information include:

- Local authority websites. For example, Perth & Kinross Council has an overview on its website on "[Trees and the law](#)"³⁴ as does [East Lothian Council](#).³⁵
- [Citizens Advice Scotland's website on "Boundary and garden disputes"](#).³⁶
- [The website of the National Tree Safety Group](#)
- [Scottish Natural Heritage's 2018 guide to occupiers' legal liabilities in Scotland in relation to public outdoor access](#)³⁰
- [Scottish Outdoor Access Code - Practical guide for all](#) (includes information on trees and forests)
- [Scottish Forestry's website](#).
- [Forestry and Land Scotland's website](#) (for information about the national forest estate)

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Annexe

Tree disputes - possible steps to follow



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