

Tree Protection Orders In Guernsey
Guidance on How and When Tree Protection Orders are Made
Draft for Public Consultation (February 2020)

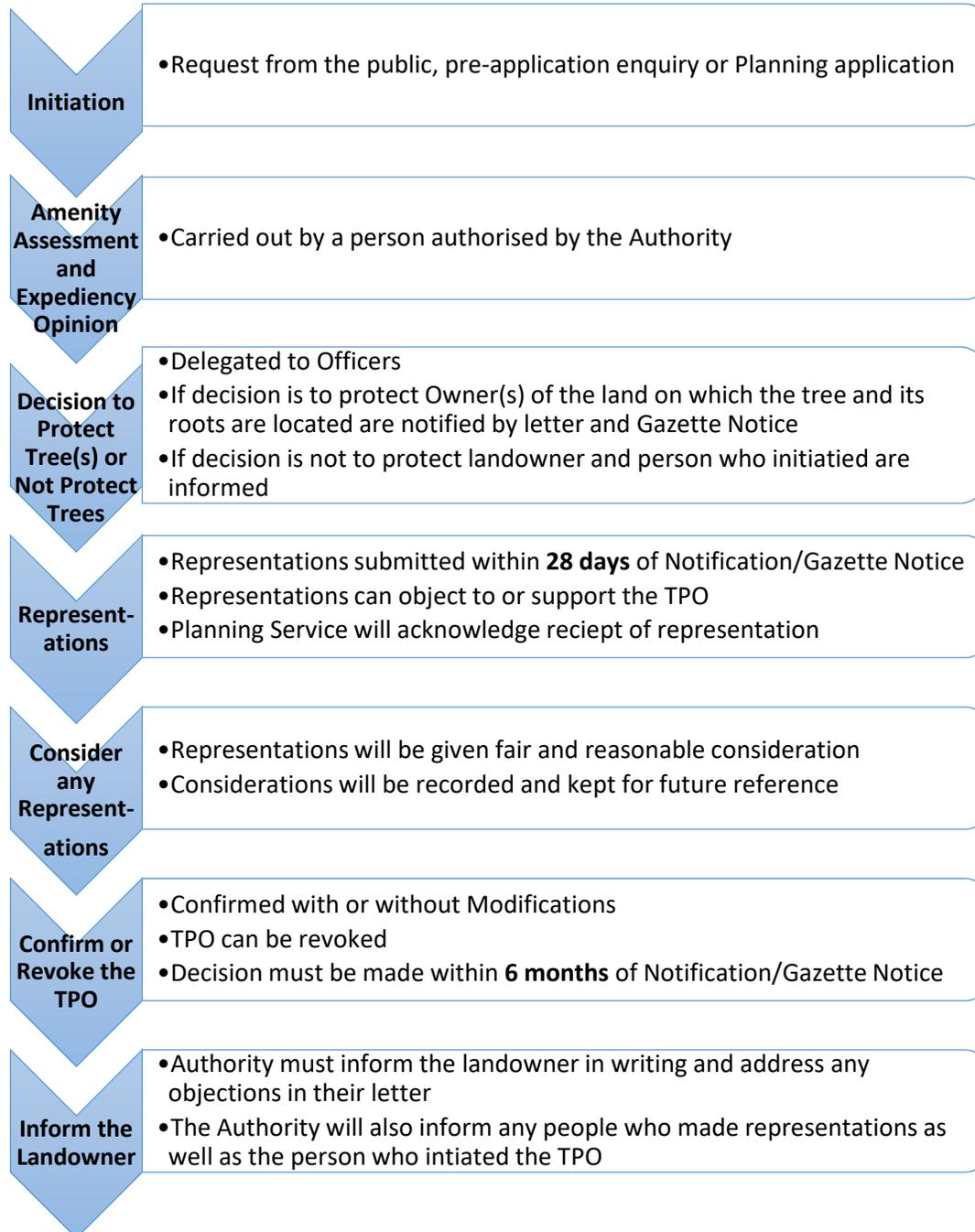
1. Introduction

- 1.1. Trees are an important element of the Island, and since the loss during the 1990s of the greater proportion of the Island's mature trees to Dutch Elm Disease, the remaining trees are of even greater importance. This is especially the case as Guernsey has a very small proportion of woodland cover¹.
- 1.2. The Land Planning and Development (Guernsey) Law, 2005, imposes various duties with regard to the protection of trees and includes provision for the making of Tree Protection Orders (TPOs) to afford statutory protection to specific trees or larger groups of trees in the interests of amenity.
- 1.3. The selection of trees for the making of a Tree Protection Order (TPO) requires trees and woodlands to be assessed for their amenity value and also an opinion formed on whether it is expedient to protect them. This document sets out the criteria and processes the Development & Planning Authority ('the Authority') will use when considering trees for a TPO. In doing so it aims to:
 1. Inform landowners and professionals about the criteria that will be used in assessing trees for statutory protection; and
 2. Provide a transparent, robust and defensible framework to be used by the Authority to consistently assess whether trees should be protected.
- 1.4. This document has been approved by the Development and Planning Authority for public consultation. Comments made during the consultation will be considered and if necessary this document will be updated to reflect such comments. The updated document will then be presented to the Development and Planning Authority Committee for their approval.

¹ 3.4% of the Island's land area is covered in woodland, compared with 9.6% in Ireland, 11.6% in the UK, 28.7% in France and a European average of 46% (Source: States of Guernsey, 2020)

2. Procedure for Protecting Trees.

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



3. Initiation

- 3.1. Assessment for a TPO could be initiated by:
- any person (typically an arborist) concerned about someone intending to carry out inappropriate tree works;
 - construction or other damaging works proposed within the vicinity of trees (typically identified by a pre-application enquiry or planning application)
 - planning applications for “lopping, topping or felling” of trees on sites where a planning condition requires consent for such works or for the removal of such conditions.
- 3.2. When considering trees for protection the Authority must be able to demonstrate that those trees contribute to public amenity and also that it is expedient to protect those trees.

4. Amenity Assessment and Expediency Opinion

Amenity Assessment

- 4.1. The Law (the Land Planning and Development (Guernsey) Law, 2005, section 43) requires a TPO to be made only where it is in the interests of amenity. The Law does not define 'amenity', nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO.
- 4.2. The Authority considers it is reasonable to conclude that TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public. The Authority should be able to show that a reasonable degree of public benefit would accrue before TPOs are made or confirmed, and be able to explain to landowners why their trees or woodlands have been protected by a TPO.
- 4.3. A structured and consistent method of assessing the 'amenity value' of trees must take into account the following criteria:
- (1) **Visibility:** the extent to which the tree(s), group of trees or woodlands can be seen by the general public will inform an assessment of whether its impact on the local environment is significant. If they cannot be seen or are just barely visible from a public place, such as a road or footpath, a TPO might only be justified in exceptional circumstances;
 - (2) **Individual impact:** the mere fact that a tree is publicly visible will not of itself be sufficient to warrant a TPO. The assessment should also consider the tree's particular importance by reference to its size and form, its future potential as an amenity, taking into account any special factors such as its rarity, value as a screen or contribution to the character or appearance of the locality. In

relation to a group of trees or woodland, an assessment should be made of its collective impact;

- (3) **Wider impact:** the significance of the trees in their local surroundings should also be assessed, taking into account how suitable they are to their particular setting and the underlying landscape character, as well as the presence of other trees in the vicinity.
- (4) **Biodiversity and Ecology**
- (5) **other factors**, which may include one or more of the following:
 - a. pollution control;
 - b. shade or shelter;
 - c. where the tree is an especially outstanding tree;
 - d. the tree forms part of the special interest or setting of a Protected Building or Protected Monument and/or is a feature within a Conservation Area;
 - e. the contribution the tree(s) might make to an approved States' strategy, resolution, plan or equivalent;
 - f. screening for privacy or of an eyesore (which may or may not be part of a landscape scheme or conditions of a planning permission); and
 - g. contribution to mitigating climate change.

4.4. The above other factors, as may be relevant in a particular case, will usually contribute to the public amenity value of a tree(s). However, they can be sufficient alone to warrant a TPO.

4.5. In summary, assessment of trees will require a professional judgement to be made of the value or benefits of those trees, including:

- the contribution made as a feature and in visually enhancing the locality, usually as visible from public places;
- the contribution made to the underlying landscape character of the locality;
- the benefit the trees have in ameliorating the local environment, especially in urban or suburban areas;
- the contribution made to biodiversity, mainly by native/naturalised trees; and
- any special features/factors (e.g. principal component of arboricultural features, cohesive tree group, special historic/commemorative importance, or of exceptional form, especially if rare or unusual).

The Amenity Assessment Survey

4.6. Before making a TPO the Officer should visit the site of the tree or trees in question and consider whether or not a TPO is justified. An Amenity Assessment can be made by an Officer of the Planning Service, or any other person authorised by the Authority. It is usual, although not always essential, that the Amenity Assessment is made by a suitably qualified person (such as an arborist) which is important in correctly identifying the species of the tree and its health and condition.

- 4.7. Any person duly authorised in writing by the Authority may enter land for the purpose of deciding whether and in what manner the making of a TPO ought to be exercised, although it may sometimes be possible to assess the tree without entering the land. If there is an immediate risk of felling this can justify the making of a TPO before it is possible to assess fully the amenity value of the tree. This should not, however, prevent a preliminary judgment being made on whether a TPO would appear to be justified on amenity grounds, nor from making a more considered assessment before the TPO is confirmed.
- 4.8. During the site visit the Officer should gather sufficient information to draw up the TPO with accuracy. The Officer should accurately record the number and species of the individual trees or groups of trees to be included in the TPO and their location. The boundaries of Areas and Woodlands should be identified. Site survey notes and photographs should be taken and retained for future reference as well as an aide memoir to complete the Amenity Assessment Form.

Expediency

- 4.9. Although a tree may merit protection on public amenity grounds, an opinion must also be formed on whether it is expedient to make the TPO. The following gives guidance on when and why it may, or may not, be expedient to make a TPO.
- 4.10. Risk to the Tree(s). It may be expedient to make a TPO if there is a demonstrable risk of the tree being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. In some cases the Authority may believe that certain trees are at risk generally from development pressures that might be evident through a pre-application enquiry or a planning application. There may be some other reason to believe that trees are at risk such as changes in property ownership and intentions to fell trees. These are not always known in advance, so in exceptional circumstances the protection of selected trees may be justified as expedient on a precautionary basis.
- 4.11. Condition of the Tree(s). It is unlikely to be expedient to make a TPO in respect of trees which are under good arboricultural or silvicultural management. Conversely it would not be expedient to protect a dead, dying or dangerous tree; nor would it normally be expedient to protect a tree with a lifespan of less than ten years. However, where trees are in poor health or structural condition they can be protected if they are part of a Group, Area or Woodland TPO. This gives such trees protection and if replaced with equivalent trees the amenity value of the group would be sustained in the longer term.
- 4.12. Tree(s) on States' Owned/Managed Land. The States own and manage large areas of land on which trees are located. The Land Planning and Development

(Guernsey) Law, 2005, places a duty on all States' Committees to ensure that existing trees are protected. As a responsible owner the States will manage its stock of trees in a manner that will, wherever possible, sustain their long term survival. It will not, therefore, normally be expedient to protect trees on land owned and/or managed by the States. However, it may be expedient to protect tree(s) in the following circumstances:

- The land is to be sold, which is especially important if it is to be sold with development potential because a purchaser needs to aware whether the tree(s) are protected or not; or
- The land is or is likely to be subject to development.

4.13. Given the above, it is important that States' Services and Committees contact the Authority at the earliest possible stage if they are thinking of selling land or carrying out development on land with existing trees.

4.14. Trees Subject to a Condition on a Planning Application. Prior to 2009, when the TPO system was introduced to Guernsey, some trees were protected by a condition on a planning application. Similarly, since 2009 some existing and newly planted trees have been protected by such conditions. The Authority will review these planning conditions when it is necessary, such as a pre-application enquiry or a new planning application or at request from the landowner. It may be expedient to protect such trees, especially where 'other factors' apply (see paragraph 2.6 above).

4.15. Tree(s) within Sites of Special Significance (SSS). Sites of Special Significance are shown on the Proposals Map of the Island Development Plan. Planning permission is needed to top, lop or fell a tree(s) within a SSS where that tree(s) contributes to its special interest. Therefore it will not normally be expedient to protect a tree(s) within a SSS unless it has been demonstrated it does not contribute to its special interest.

4.16. Extant Full Planning Permission. Where full planning permission has been given and that permission has not expired (usually a permission expires after 3 years if it has not been implemented), it will not be expedient to protect the trees if this would prevent implementation of that permission. However, it may be appropriate to protect such trees if an application is received to renew that planning permission.

4.17. It will not be expedient to protect trees that are:

- likely to need major cutting back to comply with hedge cutting legislation; or
- causing a nuisance (as specified in class 7, section 3(b) of the Land Planning and Development (Exemptions) Ordinance, 2007, or in any equivalent provision in any Ordinance revoking or re-enacting that Ordinance); or
- obstructing a highway or operation of the airport; or

- causing damage to a building or structure; or
- a Cypress tree, other than an individually identified tree.

4.18. The opinion of whether it is expedient to protect a tree (the 'Expediency Opinion') should be recorded by Officers on a standard form which must be kept for future reference.

5. Decision to Protect or Not Protect Trees

- 5.1. TPOs can often be made at a time when there is a risk that trees may be cut down or destroyed in the near future. Therefore the Authority's approved scheme of delegation provides authority for the making of a TPO to the Director of Planning and other Officers under his/her supervision.
- 5.2. In cases where the threat to trees is immediate (such as a Tree Surgeon on site preparing to undertake work to the tree), the TPO can be made by Officers on the spot using the Immediate Tree Protection Order form. In such cases the TPO must be confirmed as soon as possible and not more than six months.
- 5.3. Officers will consider the circumstances of each individual case on its merits and by exercising their professional judgement. Where trees do not contribute to public amenity they will not be protected. Where trees contribute to public amenity and it is expedient to protect them, they will be protected. Where trees contribute to public amenity but there are reasons why it is not expedient to protect them, they will not be protected.

Types of TPOs

- 5.4. A decision to protect the tree(s) also needs to consider the most appropriate type of protection. The following types of TPOs are possible:
1. *Individual*. If an individual tree(s) merit protection in their own right they should be specified as individual trees in the TPO. The map will be marked T1, T2 etc and a schedule provided, e.g. T1 – oak. T2 Sycamore.
 2. *Group*. The group category should not normally be used simply to protect trees which have individual merit and happen to be standing close to one another, but for their merit as a group, if their overall impact and quality justify protection. They can be marked on the map as G1, G2 etc and the number of trees in the group and their species should be specified in the Schedule of the TPO (e.g. G1 comprising of 2 Oaks, 2 Sycamore; G2 comprising of 3 Ash). Where possible, each tree's location and indicative root area should be shown on the map.
 3. *Area*. Using the area classification is an alternative way of specifying scattered individual trees. All the trees within the defined area on the map are protected

if their description in the schedule of the TPO is all-encompassing (e.g. 'the trees of whatever species within the area marked A1 on the map'). If the TPO limits protection to those species within the area which make a significant contribution to amenity, this should be made clear in the description of the trees in the Schedule (e.g. 'the oak and beech trees within the area marked A2 on the map'). The area classification has its drawbacks. Firstly, it is possible that trees will be included in the TPO which do not merit protection. Secondly, unlike woodlands, the TPO protects only those trees standing at the time the TPO was made. It is preferable that the area classification should only be used in emergencies (e.g. where the trees are at immediate threat) or where the trees need to be protected quickly (e.g. where a pre-application enquiry or planning application has been submitted). In such cases the area TPO should only be used as a temporary measure until the trees in the area can be assessed in more detail and alternative form of protection considered if confirming the TPO.

4. *Woodland.* For areas of trees or woodlands it is not necessary for the purposes of the TPO to record the number of trees, and a general description of species should be sufficient. It is, however, important to gather enough information to be able to define accurately on the map the boundaries of the areas or woodlands in question. The boundary of woodland should be indicated on the map as accurately as possible, making use of any natural landscape features or property boundaries in a way that will avoid any future uncertainty if trees close to the boundary are removed. Use of the woodland classification is unlikely to be appropriate in gardens.
- 5.5. Where a decision is made to protect the tree(s) the Authority must notify the landowner(s) in writing and place a notice in La Gazette Officielle ('the Gazette'). The Authority will endeavour to ensure that the issue of its letter to the land owner(s) and the placing of the Gazette Notice are on the same day. However, this is not always possible, especially where an Immediate TPO has been made. In such cases, the Authority will place the Gazette Notice as soon as practically possible.
- 5.6. When notifying the landowner the Authority is required to provide information such as the address on which the tree(s) are located and the appeal procedure. The Authority will also provide the Amenity Assessment Form as well as the Expediency Opinion in order to explain to the land owner why the Authority considers the trees are worthy of statutory protection and has acted to make a TPO.
- 5.7. Where the decision is not to protect trees on the grounds that they contribute to public amenity, but it is not expedient to protect them, this does not preclude the Authority from protecting the tree(s) in the future where there is a material

change in circumstances, e.g. if land ownership changes or the trees are subject to development pressure.

Preparing the TPO

- 5.8. A TPO will be in the form of the standard TPO developed for individual trees, groups of trees, areas of trees and woodlands. Any combination of these four categories may be used in a single TPO.
- 5.9. The tree, trees or woodlands to be protected will be specified in the Schedule of the TPO and their location shown on a map which is also included in the TPO. The scale of the map (using the current version of Digimap) will be sufficient to give a clear indication of the position of the trees or woodlands (1:1250 will usually be sufficient for trees or groups of trees; 1:2500 will usually be sufficient for woodlands).
- 5.10. For individual and groups of trees the map will show the location of the centre of the tree trunk together with an indication of the likely extent of the roots. The extent of the tree roots will be estimated using a formula. It is important to note that this is an estimate for the purposes of notifying owner(s) of land where the trees and their roots are likely to be located. Further research may be necessary to accurately establish the likely extent of roots taking into account the site conditions.
- 5.11. The map for Area and Woodland Trees will only show the area of land within which the trees are protected.

6. Making Representations to the TPO

- 6.1. Any person may make representations on the TPO. Representations must be made in writing within 28 days of receiving the letter from the Authority or the Gazette Notice (whichever is later). Representations can be made by email (planning@gov.gg) or by letter (addressed to The Planning Service, Frossard House, La Charroterie, St Peter Port Guernsey GY1 1FH), giving the name and address of the representor. Anonymous representations cannot be accepted.
- 6.2. If you wish to make a representation, it is important to state whether you support or object to the TPO and specify which TPO you are referring to. This is best achieved by adding, for example: "Objection to TPO ref PT1 at High Street, St Peter Port; or "Support to TPO ref PT1 High Street St Peter Port" in the subject line of the email or as the subject of the letter. The following table sets out the factors the Authority can and cannot take into account when considering representations.
- 6.3. Factors the Authority **CAN** take into account

- The contribution the tree(s) make to public amenity – this usually means the tree(s) must be able to be seen from a public place.
- The health of the tree(s) (e.g. if the tree is dead, diseased or dying)
- The general condition and structure of the tree(s)
- If the tree(s) contribute to shade or shelter
- Biodiversity or ecology
- A States' approved strategy, plan or Resolution
- If it is a particularly important or rare type of tree
- If the tree(s) contribute to the setting of a Protected Building and/or Protected Monument
- If the tree(s) are a feature within a Conservation Area
- Screening for privacy or as a means to mitigate other negative effects of development
- If the TPO obstructs the implementation of an extant planning permission
- If the tree is causing a nuisance
- If the tree is damaging a public highway or a wall or earthbank adjacent to a public highway in which case it would not be expedient to protect the tree(s).

6.4. Factors the Authority **CANNOT** take into account:

- The financial implications of protecting the tree(s)
- Commemorative or memorial trees, unless that person is of exceptional national or international importance.

6.5. If you make a representation to the TPO, the Authority will contact to you to confirm receipt of your representation.

6.6. Upon request, Officers will meet the owner of the land and any agents acting on their behalf.

7. Considering Representations to the TPO.

7.1. Where representations have been made to the TPO they will be given fair and reasonable consideration, which will be recorded and kept for future reference.

7.2. Where objections to the TPO are made on the grounds of the health of the tree and/or its condition, then specialist advice will usually be needed (e.g. from an Arborist).

8. Confirming the TPO.

- 8.1. When a TPO has been made, it must be confirmed (with or without modifications) or revoked within 6 months of the letter to the landowner or Gazette Notice (whichever is later).
- 8.2. The decision to confirm a TPO (or not) will:
- be delegated to Officers where no objections have been received;
 - be made by the Development & Planning Authority Committee where objections have been received.

9. Informing the Landowner and Representors of the Decision.

- 9.1. Once a decision has been made to confirm the TPO, with or without modification, or revoke the TPO the Authority must inform the landowner in writing. If the landowner has objected to the TPO, the Authority will also set out how the objections have been considered. The Authority will also inform any representors and the person who initiated the TPO.

10. Keeping the Register of Tree Protection Orders Up to Date.

- 10.1. The Authority is required to maintain the Register of Tree Protection Orders. Therefore, if a tree(s) no longer merits protection, a landowner can request that the TPO is revoked. Such requests must be made to the Development and Planning Authority in writing and supported by a statement setting out why the tree does not contribute to public amenity and/or it is not expedient to protect the tree (see Section 4 of this document). The Authority decision will be final and there is no appeal against this decision.
- 10.2. In the following circumstances a planning application, instead of a request to revoke the TPO, should be made:
- a) any harm or damage being caused or likely to be caused by the tree to buildings or structures;
 - b) the tree is in poor health;
 - c) the tree(s) is causing a nuisance (e.g. overshadowing or falling leaves);
 - d) the tree(s) will be removed to re-plant another tree(s);

11. Conclusion

- 11.1. The amenity value of trees for the making of TPOs needs to be assessed as a matter of professional judgment. The various factors which determine whether it is expedient to protect a tree and whether the amenity value of the tree merits that protection all need to be taken into account, and will contribute to the depth

of the assessment. The factors taken into account also need to be recorded so that the decision of whether or not to protect a tree can be explained to any interested parties.