

Tonbridge and Malling Borough Council

Tree Safety Policy



Table of revisions

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1.0 The importance and value of trees

Trees and woodlands bring many benefits to the local environment. They make an important visual contribution, softening and enhancing the landscape by providing form, colour and diversity that change with the seasons. Trees help to improve air quality, play a part in water management and air conditioning that mitigate the effects of climate change and help to reduce global warming. Trees provide shade from the sun and shelter from wind and rain. They have significant aesthetic value screening unsightly buildings, providing privacy and reducing the effects of noise they help to enhance land and property values. Woodlands and parklands that contain trees, offer valuable habitats to a range of wildlife and desirable opportunities for education, relaxation and informal recreation including walking, cycling and horse riding.

The borough of Tonbridge and Malling has a large stock of trees reflecting its predominately rural nature. This strategy covers trees in the Council's ownership, the majority are in areas of woodland and public open spaces accessible by the general public.

Trees are amongst the least transitory, longest lasting assets of the natural environment. But as a living species they are subject to disease and defects that can make them a nuisance and in some situations they can become unsafe.

2.0 Risk management

Over many years risks from trees have been managed and have not been high on the list of public concerns. However, attitudes to risk are changing and in a risk-averse society the duty of care has become more onerous. Given the importance of trees the risks they pose need to be managed with their protection and conservation.

The Health and Safety Executive has identified the risk as 'broadly acceptable'. It states that each year between five and six people in the UK are killed when trees fall on them. Thus the risk of being struck and killed by a tree falling is extremely low. Around three people are killed each year by trees in public spaces; but as almost the entire population of the UK is exposed, **the risk per person is about one in 20 million.**



The risk, per tree, of causing fatality is of the order of one in 150 million for all trees in Britain or one in 10 million for those trees in, or adjacent to, areas of high public use. However the low level of overall risk may not be perceived in this way by the public although there is no research to suggest trees have become more dangerous in recent times.

3.0 History of claims

In recent years tree related claims against the Council have been relatively minimal. Since 2002 a total of 33 claims have been made costing the Council Insurers approximately £40,000 in claim payouts. These claims have been related to property damage caused by falling trees or root damage and none have related to personal injury.

4.0 Scope

This Policy covers trees on all Borough Council sites, predominantly trees are located on public open spaces or within woodlands. The Council is responsible for an estimated 2,500 non woodland trees and 24 woodlands which are estimated to contain between 2,000-10,000 trees per woodland.

The public open spaces include Country Parks, Tonbridge Castle grounds, Tonbridge Cemetery, sportsgrounds, woodlands, Council owned car parks and trees on land adopted as part of new developments or on other public open spaces throughout the borough.

The Council also undertake tree inspections within the car parks of sites managed by Tonbridge and Malling Leisure Trust. These include The Angel Centre (Tonbridge), Tonbridge Swimming Pool, Larkfield Leisure Centre and Poulton Wood Golf Centre (Tonbridge).



Trees owned by Parish/Town Councils, the County Council, in the ownership of Housing Associations and those privately owned are excluded from this Strategy as are highway trees.

In April 2009 the Borough Council commissioned its insurers, Zurich, to carry out a Tree Liability Report. This report assessed the Council's current approach to tree safety and advised on recommended improvements. The recommendations of the report have been considered within later sections of this policy and its specific policies.

5.0 Aims of the policy

The policy aims to address the following key issues:

- To ensure the management of the Council's tree stock contributes to making the environment safe, attractive and sustainable.
- To provide formal policies that enable the Borough Council to conform to best practice in the management of its trees, in relation to health and safety.

6.0 Legal obligations/best practice

Landowners have a legal Duty of Care with respect to trees on land they own. Industry-wide standards are currently in the process of revision given the need to be able to demonstrate in a court of law that owners of trees and those who carry out tree work have acted properly. At the present time a variety of standards that have arisen over decades are referred to in practice.

The Occupiers Liability Act 1957 is relevant for all public services, since nearly all are occupiers of property to which visitors resort throughout the year. It states: *"The common duty of care is a duty to take such care as in all circumstances of the case is reasonable, to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there"*.

Case law identifies the test of the 'duty of care' owed by a landowner with regard to trees as being that of *"the conduct to be expected of a reasonable and prudent landowner"* (House of Lords 1950).

A range of other more recent statements are referred, in particular the Health and Safety Executive SIM 01/2007.5(HSE) *Management of the risk from falling trees* (see **Annex 1**). The document is aimed specifically at Enforcement Officers not Duty Holders but clearly indicates the approach that the HSE would expect Duty Holders to take under Section 3 of The Health and Safety at Work Act 1974 (HSW). Employers, persons carrying out undertakings or in control of premises all have duties under the HSW Act. In particular, there is the duty to do all that is reasonably practicable to ensure that people are not exposed to risk to their health and safety. The HSE document states: *"Doing all that is reasonably practicable does not mean that all trees have to be individually examined on a regular basis. A decision has to be taken on what is reasonable in the circumstances and this will include consideration of the risks to which people may be exposed"*.

Other legislation relevant to the management of trees includes the Occupiers' Liability Acts 1984, the Local Government (Miscellaneous Provisions) Act 1976, the Countryside and Rights of Way Act 2000 (CRoW), the Wildlife and Countryside Act 1981 as well as legislation relating to Sites of Special Scientific Interest. Risk management is required under the Management of Health and Safety Regulations 1999.

7.0 Tree inspection policy

Tree inspections are defined as visual or exploratory assessments to determine various attributes of trees as determined by the level of arboricultural knowledge of the person concerned.

This section of the policy deals with the following questions that need to be addressed in dealing with tree inspections.

1. Which trees need inspecting?
2. How often do they need inspecting?
3. What level of competence should the inspector have?
4. How should the trees be inspected?
5. When should the trees be inspected?
6. How should tree works be prioritised?
7. What records should be kept of the inspections?

7.1 Which trees need inspecting?

HSE SIM 01/2007.5 provides guidance for HSE Inspectors and Local Authority Enforcement Officers. It states: *'Stakeholders, including Local Authorities (as duty holders), major landowners and arboriculturalists are being encouraged to agree a simple tree management standard. Given the large number of trees in public spaces across the country, control measures that involve inspecting and recording every tree would appear to be grossly disproportionate to the risk. Individual tree inspection should only be necessary in specific circumstances, for example where a particular tree is in a place frequently visited by the public, has been identified as having structural faults that are likely to make it unstable, but a decision has been made to retain it with these faults'*.

The HSE believes that public safety aspects can be addressed as part of the approach to managing tree health. Groups of trees can be identified by their position and degree of public access. As a minimum, the HSE suggests trees should be divided into two zones: one zone where there is frequent public access to trees (for example in and around picnic areas, schools, children's playgrounds, popular footpaths, car parks, or at the side of busy roads); and a second zone where trees are not subject to frequent public access. As a rough guide 'trees subject to frequent public access' are those that are closely approached by many people every day. For trees in a frequently visited zone, a system for periodic, proactive checks is appropriate. Further details of the HSE's suggested approach are located in **Annex 1**.

Taking the HSE's comments into consideration thought was given to the nature of the Council's tree stock in regard to relative public use/access. It has been concluded that due to the scale and nature of each site all 'Mature trees' will be inspected. It was felt that the Council managed no sites containing 'deep woodland' or significant areas where public access was completely restricted. Mature trees are defined in the Council's current Grounds Maintenance Contract as those over 6 metres tall.

Provision for maintenance of non-mature trees on public open spaces is, however, made within the Grounds Maintenance Contract.

Policy 1

The Council will monitor the health and safety of all mature trees in its ownership by carrying out regular inspections.

7.2 How often do trees need inspecting?

Unfortunately there is no definitive statement that gives a statutory definition with respect to the frequency of inspections. Government Circular 90/73 concerned with the inspection of roadside trees (with the potential to fall on the road) states '*The frequency of investigation will depend on age, kind, condition and circumstances of each tree.*' The frequency of inspections should depend on the location of the tree in relation to the level of public activity nearby and its age and condition.

The HSE omits any specific identification of frequency of tree inspections but notes the need for "a system for periodic, proactive checks is appropriate".

A 2008 Conference called by the Tree Safety Group brought together fifteen experts including the Forestry Commission, Barristers, members of the British Standards B/213 Committee – Trees, the Director of the Arboricultural Association, leading academics and others to discuss standards. 'Regular' inspection was described as 'vital', but not one contributor specified what frequency constituted 'regular'.

The Forestry Commission provide useful guidelines (Common sense risk management of Trees – in collaboration with the National Tree safety Group above) by suggesting placing sites into zones – typically two zones may be sufficient, high usage (e.g. car parks, play areas and amenity areas) and low usage (away from known access routes). It also states '*guidance relating to inspection frequency varies greatly; there is no uniformly accepted frequency appropriate to all situations, the decision is a judgment for the owner, agent or adviser, applying sensible reasonable behaviour in taking account of the site circumstances as a basis for good practice*'.

As previously highlighted, Zurich has undertaken a Tree Liability Report for the Borough Council. In summary the report recommends that high risk trees, those near footpaths etc, should be inspected by a qualified person at least once every five years. In addition it notes that annual checks should continue to identify storm damage etc and obvious ill-health resulting in unsafe limbs.

A British Standard – BS 8516 concerned with tree safety inspection has been drafted and consulted, but is not yet adopted (Relevant selected extracts from the draft proposal are detailed in **Annex 2**). In terms of frequency of inspections the draft, which is aimed at tree owners and managers, identifies prioritising inspections dependent on the level of public access. The draft proposal would require all trees to be checked by a ‘trained person’ every three years, with a still more rigorous ‘expert inspection’ by an arboriculturist every five years. To date this Standard has not been adopted. In the absence of statutory regulations the practice of other local authorities is a valuable reference.

Kent County Council is responsible for the highway network in the borough. Section 154 of the Highways Act 1980 empowers the County Council to inspect and manage all trees within falling distance of the highway, termed highway trees. The Code of Practice for Highway Maintenance Management Section 9.13.4 (2005) ‘Well-maintained Highways’ states that: ‘most trees should ideally have an arboricultural inspection every five years’.

Tunbridge Wells Borough Council currently carries out an ‘in-house’ expert inspection on an annual basis within their parks and open spaces. This relatively high frequency of inspection is achievable due to the relative low number of trees they manage, (approximately 2,500). The Borough Council does not have a formal written Strategy.

Maidstone Borough Council formally inspect one third of the borough each year with works carried out in the fourth year. Parks and open spaces staff carry out reactive works and inspection as reported/seen. Specialist survey work on ancient and veteran trees are commissioned as necessary. The Borough Council does not have a formal written Strategy, though are looking to write this and move to a three year rotation from 2020.

Sevenoaks District Council undertakes tree inspections at a frequency related to public usage. In regard to its countryside sites, annual inspections are undertaken at High Risk (High Use) sites with inspections decreasing to bi-annual or every third year at sites with a lower relative public use. Some sites have also been identified as not requiring any regular inspection. Initial surveys of all trees were undertaken by external consultants though subsequent inspections are now carried out ‘in-house’ through the Council’s Ranger Service.

Medway Council’s Tree Management Policy (adopted January 2009) specifies a policy “ensuring a competent arboriculturist undertakes regular inspections” as part of its tree management; no definition is given of “regular”.

As previously demonstrated, whilst no industry standard has yet been adopted in regard to inspection frequency, some comparables can be drawn from relevant guidance and approaches adopted by other local authorities. In general, it appears that expert inspections should be carried out at a frequency no longer than five years apart with these being supported by more basic inspections.

Further to the above, consideration should also be given to the need and frequency of basic inspections based on the individual risk presented by the trees/sites based

on public usage. In accordance with HSE guidance, Tonbridge and Malling Borough Council has identified a list of 'Priority Sites' that demonstrate relative high public usage and a full list can be found at **Annex 3**. It is the intention that trees at these sites, within falling distance of main thoroughfares and open spaces, will be subject to basic annual inspections.

Taking the above into consideration the following policies have been developed:

Policy 2

All mature trees owned by the Council will be subject to an expert inspection (see definition at 7.4) every three years.

Policy 3

In addition to expert inspections, basic inspections (see definition at 7.4) will be undertaken annually on all mature trees at identified priority sites and locations as highlighted at Annex 3.

Policy 4

After storm conditions occur (Storms which are categorised and named by the Met Office which also have significant impacts in the local area within the Borough) a basic inspection will be carried out at priority sites as soon as conditions permit and as staffing allows.

7.3 What level of competence should the inspector have?

The un-adopted British Standard 8516 – (see **Annex 2**) identifies four levels of inspection:

Level 1 'Lay' – requires no specialist knowledge

Level 2 'Basic' – should be 'by a person trained to observe potential hazards (for example Tree Warden, Park Ranger)'.

Level 3 'Expert' – undertaken by a qualified arboriculturist.

Level 4 'Detailed' – inspection by an arboriculturist requires either an aerial view or specialised equipment.

Tonbridge and Malling Borough Council's Grounds Maintenance Contract currently specifies the following required standard for undertaking Expert Inspections:

"The person undertaking these inspections shall hold qualifications which in the opinion of the Supervising Officer make him fit to carry out the work. As a guide, the following qualifications or their equivalents will be acceptable:

Degree in Forestry or Professional Member of The Institute of Chartered Foresters or Diploma in Arboriculture

The HSE's advice states: *"a quick visual check for obvious signs that a tree is likely to be unstable should be carried out by a person with a working knowledge of trees and their defects, but who need not be an arboricultural specialist. Informing staff who work in parks or highways as to what to look for would normally suffice.*

Policy 5

Expert inspections will be undertaken by a qualified arboriculturist. The minimum qualification standard required will be in accordance with the Council's grounds maintenance contract.

Policy 6

Basic inspections will be undertaken by a trained person (e.g. Tree Warden, Park Ranger). The minimum training required will be a LANTRA Basic Trees Survey & Inspection course, or equivalent.

7.4 How should the trees be inspected?

Trees are normally assessed by means of scheduled systematic visual assessment initially from ground level. Assessments will usually consist of a staged approach and compare the tree being inspected to a notional healthy, vigorous and defect free specimen. This staged approach may include:

1. Visual inspection of the tree for defect symptoms and overall vitality. If there are no signs of any problems the assessment is concluded.
2. If a defect is suspected on the basis of the symptoms, the presence or absence of that defect must be confirmed by thorough examination.
3. If the defect is confirmed, it must be quantified, remedial action should be identified and priority/urgency of works recorded.

Where necessary, further detailed investigation of potential structural weakness may be needed involving aerial inspections, soil and root condition or other procedures for assessing the nature of decay, wood quality or internal stem condition.

The un-adopted British Standard 8516 – (see **Annex 2**) indicates the following:

Expert Inspections - Systematic and diagnostic process of visual inspection by a competent person (e.g. an arboriculturist) from ground level using binoculars, mallet and probe as necessary in order to gain sufficient understanding of a trees structural condition, so as to inform, where appropriate, re-inspection interval and management recommendations (risk control measures) including detailed inspection.

Basic Inspections - Preliminary but systematic inspection undertaken (possibly using binoculars, mallet and probe) by a person trained to observe potential

hazards (e.g. Tree Warden, Park Ranger) so as to inform, where appropriate a risk control decision, including inspection by an expert.

Policy 7

Expert inspections will consist of a ground based visual assessment to gain an understanding of an individual trees structural condition so as to inform, where appropriate, re-inspection interval and management recommendations. Where detailed inspection is identified as being necessary aerial access to view the upper parts of the tree, or the use of specialised equipment (for example decay mapping) will be undertaken.

Policy 8

Basic inspections will consist of a ground based visual assessment to observe obvious potential hazards including altered exposure, hanging dead-wood, broken branches, injury, wilting, crown decline, severed roots, cracks in the soil around the tree, evidence of fungus and splits.

It is acknowledged that Basic Inspections are undertaken to identify obvious hazards that may lead to imminent failure of the tree. In regard to Basic inspections, an example inspection form can be found at **Annex 4** that details the hazards to be identified.

7.5 When should the trees be inspected?

Inspections undertaken at differing times of the year present a variety of benefits and obstacles. Inspecting a tree in full leaf assists in determining physiological conditions from the quality of the foliage though at the same time leaves obscure a clear view of the trees structure. Conversely, inspecting a deciduous tree in bare branch condition allows a good view of the structure but no assessment of the foliage.

Policy 9

Successive inspections, whether basic or expert, will take place, where practicable, at differing times of year so that all trees are assessed in-leaf and out-leaf alternately.

7.6 How should tree works be prioritised?

Where defects are confirmed as posing an unacceptable risk, appropriate remedial action should be identified to remedy the potential hazard and the timescale specified.

Policy 10

Following expert inspections remedial action will be identified under the following categories:

Category 1	within 6 months
Category 2	within 6-12 months
Category 3	within 12-24 months
Category 4	no action required until next scheduled inspection

Note: Any tree deemed an immediate danger to the public that cannot wait until inspections are written up and handed to the council will be taped off, and the council contacted at the time of inspection to carry out necessary works to make safe.

Note: Some trees may present signs of decline that warrants re-inspection prior to their next scheduled Expert Inspection, though do not require immediate remedial action. These will be brought to the attention of the Borough Council and re-inspected within the prescribed timescales stated on the report.

Policy 11

Following basic inspections remedial action will be identified under the following categories:

Category 1	urgent action	within 6 months
Category 2	high priority action	within 6-12 months

Note: The Council will prioritise actions based on risk, and all works that are deemed to be necessary for safety reasons as emergency works, will override any other priorities that exist within the current tree work schedule.

Note: Any tree deemed an immediate danger to the public that cannot wait until inspections are written up will be taped off, and a tree surgeon contacted to carry out necessary works to make safe.

7.7 What records should be kept of tree inspections?

The Zurich report highlighted that:

“Full and readily accessible inspection records can aid the defence of liability claims. It is recommended that detailed records be kept of all inspections done, whether in response to a complaint, in connection with maintenance work, or part of a new routine inspection regime.

Records should include the area/trees inspected, when and who by, and any problems found plus remedial action taken. Records must be kept for an adequate length of time, bearing in mind the fact that in the case of personal injury a minor has until three years after their eighteenth birthday to make a claim.

Reporting should always be positive in respect of inspection systems. In other words, there should always be a report. It is often more important to show that at

the time of the inspection there was no defect. In the absence of an inspection report it would be difficult to prove that at that particular time there was nothing wrong, especially if it has resulted in some personal injury to a member of the public. This is particularly true if a number of consecutive inspections have identified no defects since there will be no evidence of inspection over a significant period.”

The data to be recorded varies with the level of inspection and should reflect the findings. Records of Basic Inspections need not be as exhaustive as Expert Inspections though any observations giving rise to concern over tree safety should be recorded.

Policy 12

Expert inspections will be formally recorded and, as a minimum, will identify the following:

- Inspector's Name:
- Date:
- Location:
- Tree Number (linked to site map):
- Species:
- Defects:
- Comments:
- Recommended Remedial Action:
- Priority for Works:
- Estimated Costs:

Policy 13

Basic inspections will be formally recorded and, as a minimum, will identify the following:

- Inspector's Name:
- Date:
- Location:
- Tree Number (linked to site map):
- Species (If Known):
- Defects:
- Comments:
- Recommended Remedial Action:
- Priority for Works:



In regard to Basic Inspections an example inspection form can be found at **Annex 4**.

7.8 List of Policies

Policy 1

The Council will monitor the health and safety of all mature trees in its ownership by carrying out regular inspections.

Policy 2

All mature trees owned by the Council will be subject to an expert inspection (see definition at 7.4) every three years.

Policy 3

In addition to expert inspections, basic inspections (see definition at 7.4) will be undertaken annually on all mature trees at identified priority sites and locations as highlighted at Annex 3.

Policy 4

After storm conditions occur (Storms which are categorised and named by the Met Office which also have significant impacts in the local area within the Borough) a basic inspection will be carried out at priority sites as soon as conditions permit and as staffing allows.

Policy 5

Expert inspections will be undertaken by a qualified arboriculturist. The minimum qualification standard required will be in accordance with the Council's Grounds Maintenance Contract.

Policy 6

Basic inspections will be undertaken by a trained person (e.g. Tree Warden, Park Ranger). The minimum training required will be a LANTRA Basic Trees Survey & Inspection course, or equivalent.

Policy 7

Expert inspections will consist of a ground based visual assessment to gain an understanding of an individual trees structural condition so as to inform, where appropriate, re-inspection interval and management recommendations. Where detailed inspection is identified as being necessary aerial access to view the upper parts of the tree, or the use of specialised equipment (for example decay mapping) will be undertaken.

Policy 8

Basic inspections will consist of a ground based visual assessment to observe obvious potential hazards including altered exposure, hanging dead-

wood, broken branches, injury, wilting, crown decline, severed roots, cracks in the soil around the tree, evidence of fungus and splits.

Policy 9

Successive inspections, whether basic or expert, will take place, where practicable, at differing times of year so that all trees are assessed in-leaf and out-leaf alternately.

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Note: Some trees may present signs of decline that warrants re-inspection prior to their next scheduled Expert Inspection, though do not require immediate remedial action. These will be brought to the attention of the Borough Council and re-inspected within the prescribed timescales stated on the report.

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Note: Any tree deemed an immediate danger to the public that cannot wait until inspections are written up will be taped off, and a tree surgeon contacted to carry out necessary works to make safe.

Policy 12

Expert inspections will be formally recorded and, as a minimum, will identify the following:

- Inspector's Name:
- Date:
- Location:
- Tree Number (linked to site map):
- Species:
- Defects:
- Comments:
- Recommended Remedial Action:
- Priority for Works:
- Estimated Costs:

Policy 13

Basic inspections will be formally recorded and, as a minimum, will identify the following:

- Inspector's Name:
- Date:
- Location:
- Tree Number (linked to site map):
- Species (If Known):
- Defects:
- Comments:
- Recommended Remedial Action:
- Priority for Works:

8.0 Implementation and review

The Council's available financial resources will be prioritised with tree safety delivered ahead of environmental improvements.

The Council will continue to ensure that its Officers with responsibility for trees will receive adequate, appropriate and periodic training in relation to their specific duties of employment.

Electronic services are widely used by the Council to communicate with the public and provide information. In addition, the development of a computerised record system as a tree management database would make recording of inspections easier to complete, store and retrieve. It would, therefore, be beneficial to investigate the development of an electronic data base and tree inspection recoding process.

The implementation of the Policies in this document will feed into and be reviewed annually within the Councils Operational Risk Register.

Alterations or amendments to this policy document will be considered if any industry/governmental standards are formally adopted.

HEALTH AND SAFETY EXECUTIVE

Management of the risk from falling trees

SIM 01/2007/05

Target Audience:
FOD Inspectors
Local Authority Enforcement Officers

Date issued: 2007-07-03 **OG Status:** Fully open **Review date:** 2011-07-03
Author Unit/Section: Agriculture & Food Sector (Agricultural Safety Section)

Summary
 Background
 Suggested approach
 Enforcement guidance
 Action by inspectors
 Further information and contacts

Summary

This SIM outlines guidance on the standard of risk management of trees, including risk assessment and where appropriate, routine checks by a competent person. Duty holders should have such systems in place to control risks from trees to their employees, contractors and members of the public. This SIM is aimed specifically at duties under Section 3 HSW Act and should be read in conjunction with HSC's Enforcement Policy Statement, HSC policy on Section 3 enforcement and HSE's guidance on Section 3 enforcement. It also gives guidance on enforcement action, which should be taken in accordance with the principles and expectations of HSC's Enforcement Policy Statement (EPS). It is **not** intended as a guide to duty holders.

Background

What is the risk?

1. Each year between 5 and 6 people in the UK are killed when trees fall on them. Thus the risk of being struck and killed by a tree falling is extremely low. Around 3 people are killed each year by trees in public spaces; but as almost the entire population of the UK is exposed, the risk per person is about one in 20 million. The risk, per tree, of causing fatality is of the order of one in 150 million for all trees in Britain or one in 10 million for those trees in, or adjacent to areas of high public use. However the low level of overall risk may not be perceived in this way by the public, particularly following an incident.
2. The average risk is firmly in the "broadly acceptable" region of the tolerability of risk triangle published in HSE's "Reducing Risks Protecting People". However, "Reducing Risks, Protecting People" explicitly states that "broadly acceptable" is a general guide and not a definitive statement of what is reasonably practicable in law.

What is required?

3. Employers, persons carrying out undertakings or in control of premises all have duties under the HSW Act. In particular, there is the duty to do all that is reasonably practicable to ensure that people are not exposed to risk to their health and safety. Doing all that is reasonably practicable does **not** mean that all trees have to be individually examined on a regular basis. A decision has to be taken on what is reasonable in the circumstances and this will include consideration of the risks to which people may be exposed. The issues that need to be included in the risk assessment are discussed in paragraph 10.

4. Around half of all fatalities due to falling trees occur in public spaces, such as a park or beside roads, so Section 3 HSW Act may be applicable. Whilst HSE may regard the average risk as extremely low, the law requires that where reasonably practicable measures are available in individual cases they should be taken. Whilst the risk of such incidents puts them outside HSEs and LAs main proactive priorities, inspectors may be called upon to investigate serious incidents, including fatalities.

Other legislation

5. In addition to duties under the HSWA there are a number of reasons why LAs as duty holders) and others may want to manage their tree stocks, for example responsibilities under other legislation and the risk of civil liabilities to:
 - reduce the risk of property damage from subsidence;
 - maintain stocks to preserve their amenity, conservation, and environmental value;
 - prevent personal injury through trips and falls on footways disturbed by tree roots; and
 - prevent vehicle damage and personal injury from obscured sightlines on the highway.

For these and other reasons, some duty holders may undertake inspection of trees in a manner well beyond the reasonably practicable requirements of the HSW Act.

6. Other legislation relevant to the management of trees includes, for example the Occupiers' Liability Acts 1957 and 1984, Occupiers Liability Act (Scotland)1960, Land Reform (Scotland) 2003, the Countryside and Rights of Way Act 2000 (CRoW), the Wildlife and Countryside Act 1981 as well as legislation relating to Sites of Special Scientific Interest, planning issues and Tree Preservation Orders.

Suggested approach

7. This SIM provides guidance on handling these issues and approaching enforcement decisions for HSE Inspectors and LA Enforcement Officers. Stakeholders, including LAs (as duty holders), major landowners and arboriculturists are being encouraged to agree a simple tree management standard. Given the large number of trees in public spaces across the country, control measures that involve inspecting and recording every tree would appear to be grossly disproportionate to the risk. Individual tree inspection should only be necessary in specific circumstances, for example where a particular tree is in a place frequently visited by the public, has been identified as having structural faults that are likely to make it unstable, but a decision has been made to retain it with these faults.
8. HSE believes that public safety aspects can be addressed as part of the approach to managing tree health and tree owners should be encouraged to

consider public safety as part of their overall approach to tree management. A sensible approach will ensure the maintenance of a healthy tree stock, the sound management of the environment and will usually satisfy health and safety requirements.

9. There are several approaches to managing the risks from trees that involve 'zoning' trees according to the risk of them falling and causing serious injury or death. Zoning approaches have been adopted by a number of large land owners and can be an effective approach. The complexity of zoning systems varies considerably, some involving as many as 12 different levels. Given the relatively low risk, some will involve a level of sacrifice (time, trouble and money) that not only meets, but goes beyond reasonable practicability, as required by HSWA s3.
10. An effective system for managing trees should meet the requirements set out in the Management of Health and Safety at Work Regulations 1999 and the associated ACoP (guidance is contained in HSG 65 Successful health and safety management and INDG 163 Five steps to risk assessment) and is likely to address the following:
 - (i) An overall assessment of risks from trees, particularly identifying groups of trees by their position and degree of public access. This will enable the risks associated with tree stocks to be prioritised, and help identify any checks or inspections needed. As a minimum, trees should be divided into two zones: one zone where there is frequent public access to trees (e.g. in and around picnic areas, schools, children's playgrounds, popular foot paths, car parks, or at the side of busy roads); and a second zone where trees are not subject to frequent public access. As a rough guide 'trees subject to frequent public access' are those that are closely approached by many people every day. Maps may be useful here as individual records for individual trees are unlikely to be necessary if zones and the trees in the zones are clearly defined.
 - (ii) For trees in a frequently visited zone, a system for periodic, proactive checks is appropriate. This should involve a quick visual check for obvious signs that a tree is likely to be unstable and be carried out by a person with a working knowledge of trees and their defects, but who need not be an arboricultural specialist. Informing staff who work in parks or highways as to what to look for would normally suffice. Duty holders should ensure that any system that is put in place for managing tree safety is properly applied and monitored.
 - (iii) A short record of when an area or zone or occasionally an individual tree has been checked or inspected with details of any defects found and action taken.
 - (iv) A system for obtaining specialist assistance / remedial action when a check reveals defects out with the experience and knowledge of the person carrying out the check.

- (v) A system to enable people to report damage to trees, such as vehicle collisions, and to trigger checks following potentially damaging activities such as work by the utilities in the vicinity of trees or severe gales.
- (vi) Occasionally a duty holder may have responsibility for trees that have serious structural faults but which they decide to retain. Where such a condition is suspected and the tree also poses a potentially serious risk because, for example its proximity to an area of high public use, a specific assessment for that tree and specific management measures, are likely to be appropriate.
- (vii) Once a tree has been identified by a check to have a structural fault that presents an elevated risk, action should be planned and taken to manage the risk. Any arboricultural work required should be carried out by a competent arboriculturist, as such work tends to present a relatively high risk to the workers involved. Duty holders should **not** be encouraged to fell or prune trees unnecessarily.
- (viii) Inspection of individual trees will only be necessary where a tree is in, or adjacent to, an area of high public use, has structural faults that are likely to make it unstable and a decision has been made to retain the tree with these faults.
- (ix) Monitoring to ensure that the arrangements are implemented in practice.

Enforcement guidance

11. Enforcement action may be appropriate following an incident or investigation of a complaint and should be in accordance with HSC's EPS and with HSE's Enforcement Management Model (EMM). In particular, consideration should be given as to how far the duty holder fell below what could reasonably be expected in the circumstances. This should be informed by the broad approach outlined above and factors such as:
 - (i) the frequency of public access to the tree;
 - (ii) the existence of a system for managing trees based on the level of risk;
 - (iii) the implementation of the system in practice, including a procedure to act on reports of structural faults;
 - (iv) the need to comply with other legislation e.g. the Wildlife and Countryside Act, Tree Preservation Orders etc. Such legislation generally allows that trees in a dangerous condition may be felled, however a specific check should be made before considering enforcement action.

12. Consideration should also be given to the risks to persons that arise from the failings of the duty holder, along with the factors set down in paragraph 39 of the EPS. Of particular relevance will be any history of previous incidents in the area managed by the duty holder and any previous advice or enforcement in relation to the duty holder.
13. For the purposes of the EMM, the guidance in this SIM should be 'established' guidance. The benchmark, based on duties under HSW Act is a 'remote' risk of 'serious personal injury'.
14. Inspectors should seek advice from either the Agriculture and Food Sector or the Central and Local Government, Education and Research Sector as appropriate before issuing an improvement notice or considering prosecution

Action by inspectors

15. When called upon to examine standards of tree management following an incident or if they identify a matter of evident concern during a visit, inspectors should base their approach in deciding whether to investigate on HSC's general guidance on Section 3 HSW Act and HSE's operational guidance on Section 3 enforcement as well as the additional advice and guidance in this SIM. Proactive inspection of duty holders' systems for tree management is **not** envisaged. Any enforcement action should be taken in accordance with HSC's EPS.
16. A good deal of relevant guidance is produced by various organisations, including the Arboricultural Association and Forestry Commission. Their guidance provides advice to help duty holders comply with the Occupiers Liability Acts and other legislation. It is also likely to be helpful to investigating inspectors, however it should be remembered that it represents **best practice** guidance for managing trees, not the minimum standard required by Section 3 HSW Act outlined above.

Further information and contacts

Arboricultural Association, Ampfield house, Romsey, Hampshire, SO51 9PA Tel 01794 368717 Fax 01794 368 978, email admin@trees.org.uk. Website Information available includes Tree Surveys: A guide to good practice Arboricultural Association Guidance Note 7

Forestry Commission website where you can download best practice guidance, including "Hazards from trees – a general guide".

"Managing Visitor Safety in the Countryside – principles and practice" produced by the Visitor Safety in the Countryside Group.

Annex 2**British Standards BS 8516 - Recommendations for Tree Safety Inspection**

This standard was published as a DRAFT on the BSI website 13 May 2008 and WAS NOT CURRENT BEYOND 31 July 2008.

No new publication has been produced to date to replace this draft standard.

Most relevant extracts from the draft document are quoted below.

Scope

This British Standard addresses considerations arising from the need to inspect trees in order to assess, and if necessary reduce their potential for structural failure.

It is aimed at tree owners and managers, and all those designing tree inspection regimes and undertaking tree inspections.

Tree inspection

Visual assessment to determine various attributes of trees as determined by the level of arboricultural knowledge of the person concerned.

Four different levels of inspection are defined

Lay - Rudimentary inspection by untrained persons (e.g. owners of trees at private residential addresses).

Basic - Preliminary but systematic inspection undertaken (possibly using binoculars, mallet and probe) by a person trained to observe potential hazards (e.g. tree warden, park ranger) so as to inform, where appropriate a risk control decision, including inspection by an expert.

Expert - Systematic and diagnostic process of visual inspection by a competent person (e.g. an arboriculturist) from ground level using binoculars, mallet and probe as necessary in order to gain sufficient understanding of a tree's structural condition, so as to inform, where appropriate, reinspection interval and management recommendations (risk control measures) including detailed inspection.

Detailed - Specialized examination identified as being necessary during expert inspection by a competent person (e.g. an arboriculturist), variously comprising aerial access to view upper parts of the tree, or the use of specialized (decay mapping) equipment.

Factors to consider

Timing of inspections - Successive expert inspections should, where practicable, be undertaken at differing times of year as this facilitates inspection under a range of conditions.

Prioritising inspections - A prioritized inspection schedule should be undertaken based on levels of access (i.e. exposure of people to hazard) and arboricultural advice, taking account of relevant factors where known) that affect safety such as age class, condition, size and species of trees.

Where exposure increases, for example outdoor concert held in a normally unoccupied park, the inspection regime should respond to the changed demands of the site usage, to ensure appropriate and effective risk controls are provided.

Data recording - The data to be recorded varies with the level of inspection and should reflect the findings.

Lay and basic inspections need not be as exhaustive as expert inspections, though any observations giving rise to concern over tree safety should be recorded (together with the date) and referred for expert inspection in a timely manner (i.e. as soon as can reasonably be arranged).

A list of items that should be recorded for both basic and expert inspections was included.

Basic inspection - Date of inspection; name of person undertaking the inspection; trees inspected (listed by common name, or identification number referenced to a tree tag or plan; any obvious hazards observed; any limitations preventing inspection to the required level; species (listed by common name) and location; action taken

Expert inspection - Date of inspection; name of person undertaking the inspection; trees inspected of the specific area (zone) in which the trees were inspected; identification and location of individual hazard trees; species (listed by common name and scientific name); age class; significant defects present assessed as being hazardous; any limitations preventing systematic inspections; recommended actions (if required); timescale for implementing the recommendations (based on the risk posed); interval and preferred time of year for the next expert inspection.

Climatic considerations - Consideration should be given to implementing at least basic inspections in the aftermath of storm events, especially for trees previously identified as being particularly vulnerable, and/or those standing adjacent to high-value targets (e.g. trunk roads.).

Frequency of inspections

Lay inspection - It is generally accepted that layman owners of trees should be familiar with the condition of their trees, most suitably facilitated by regular observation and/or annual inspection.

Basic inspection - In the case of basic tree inspection, the interval between inspections should be driven by site usage, though annual inspection is usually appropriate for targets such as well-used highways.

NOTE A two or three year cycle may be appropriate for less frequented sites.

Expert inspection - The maximum interval between expert inspections where a target is or foreseeably may be present should be five years.

NOTE Departure from this recommendation may be justified where there is identifiable infrequent access, recorded as such at a strategic level.

Within this maximum parameter, the interval between systematic expert inspections should be varied in order to take account of a trees condition and context, including site usage and changes in circumstances and growing conditions. The interval should also take account of the findings of each previous expert inspection, and those of any lesser inspections undertaken in the meantime.

The precise timing of inspections should reflect the nature of any defect known to be present (for example seasonally occurring fungal structures) and should also address, where possible, any limitations that formally reduced the effectiveness of a prior inspection.

The competent person (for example an arboriculturist) undertaking the expert inspection should identify the appropriate interval to, and preferred time of year for, the next scheduled expert inspection.

TONBRIDGE & MALLING BOROUGH COUNCIL

List of Priority Sites/Locations

Haysden Country Park*
Leybourne Lakes Country Park*
Swanmead Sportsground
Tonbridge Racecourse Sportsground
Tonbridge Farm Sportsground
Tonbridge Castle Grounds
Tonbridge Cemetery
Woodlands Walk Public Open Space
Car parks (listed below)

* These sites may contain areas of woodland that are either inaccessible to the public or are more remote therefore public usage is relatively low. At these sites only trees within falling distances of designated paths and open areas will be subject to a basic annual inspection.

Angel East, Tonbridge
Angel West, Tonbridge
Bailey East, Aylesford
Bailey West, Aylesford
Bow Road, Watlington
Bradford Street, Tonbridge
Curran Hall, East Peckham
Deacons Field, Tonbridge
Hilltop, Tonbridge
Larkfield Leisure Centre, Larkfield
Martin Square, Larkfield
Poult Wood main, Tonbridge
Poult Wood overflow, Tonbridge
Riding Lane, Hildenborough
Rocfort Road, Snodland
Ryarsh Lane, West Malling
Sevenoaks Road, Igtham
Sovereign Way East, Tonbridge
Sovereign Way Mid, Tonbridge
Sovereign Way North, Tonbridge
Tesco high Street, West Malling
Teston Road, Offham
The Botany, Tonbridge
Twisden Road, East Malling
Waterloo Road, Tonbridge
Western Road, Borough Green
Wrotham Hill Viewpoint, Wrotham

Basic Tree Inspection Pro-forma: Example

Annex 4

Inspectors Name:.....	Site/Location.....	Date.....
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Tree No. (Link to Map)	Species (if known)	Defects/Comments	Action Required	Priority (1 or 2)	Action Taken

It is important to note that Basic Tree Inspections are only designed to recognise **obvious hazards** that may lead to imminent failure of the tree and those undertaking them are not expected to have detailed knowledge in tree biology, legislation or any other arboricultural specialism. It is also important to note that Basic Tree Inspections will also be supported by an external Expert Inspection every third year.

Only trees with defects are to be recorded above though a map should be attached to each inspection form that clearly identifies the areas in which all the trees were inspected. If trees are not recorded above and are within the highlighted survey areas it can be concluded that they have shown no signs of **obvious hazards**.

Guidance Notes

Basic Tree Inspections will consist of a “from the ground based visual assessment” and record the following information:

- | | |
|---------------------|---|
| 1. Tree No. | - Provide a unique reference number related to an appropriate map in order that the tree may be re-located |
| 2. Species | - If species is unknown, please note whether it is a conifer or broadleaf |
| 3. Defects/Comments | - Please state the nature of the defect identified (see below) |
| 4. Action Required | - Please state action to be taken by Inspector; for example “refer to expert consultant” or “remove tree” |
| 5. Priority pathway | - Priority 1’s require urgent action within 6 months; for example the tree is uprooted and overhanging a pathway |
| | - Priority 2’s require action within the next 6-12 months (i.e. prior to next scheduled inspection); for example an identified fungal infection that needs referral to an expert consultant |
| 6. Action Taken | - Confirmation when action is complete to close the audit loop |

Obvious hazards or defects:

- | | |
|---------------------|--|
| 1. Altered Exposure | - Is it apparent that an adjacent tree or other structure has been removed recently that may have supported or protected the tree from prevailing winds? Whilst this alone may not necessary mean the tree is unsafe this should be recorded to inform future inspections. |
| 2. Hanging Deadwood | - Are any large severed branches hanging within the tree? |
| 3. Broken Branches | - Are any large broken branches hanging within the tree? |
| 4. Injury | - Does the tree show any sign of damage (lightning strike, vandalism etc) |
| 5. Wilting | - Does it appear that the tree is unnaturally wilting (e.g. unrelated to the existing climatic circumstances) |
| 6. Crown Decline | - Does there appear to be obvious signs of thinning of the crown? |
| 7. Severed Roots | - Have any works been undertaken in close proximity to the tree that may have affected its stability or health? Is there any soil disturbance? |
| 8. Heave | - Is there any significant cracking in the ground immediately at the base of the tree? |
| 9. Fungal Infection | - Are there any fruiting fungal bodies at the base/on the tree or any obvious signs of decay? |
| 10. Splits | - Are there any obvious cracks or splits? |

