



Advice to Members: Duty to Consult on the removal of street trees - July 2024

[Section 96A into the Highways Act 1980](#) imposes a duty on Local Highway Authorities in England to consult on the removal of some street trees – the ‘duty to consult’. It came into force on 01 December 2023.

Section 96A of the Highways Act 1980 was created as a result of legislation introduced at [section 115 of the Environment Act 2021](#).

The duty to consult is likely to require the creation of new processes and platforms to manage the obligation. Some local authorities may be able to adapt existing processes, and some may have to establish entirely new systems. The advice below will not be applicable to all members but sets out some considerations.

1. Read the [guidance](#) from the Department of Environment, Food and Rural Affairs (DEFRA).
2. Establish a network of key stakeholders within your authority. This should include professionals who have a direct influence on the process, such as Tree Professionals, Arborist Contractors, Highway & Transport Professionals, Asset Management Software and GIS Specialists and key decision makers, for example Directors, Heads of Service and Elected Officials such as Ward Councillors and Lead Members who have responsibility for matters relating to the environment.
3. Communicate the requirements of the Act. Inform identified stakeholders of the requirements of the Act, this may be to provide an overview to Key Decision Makers so that they understand the process and its limitations, for example if Ward Councillors are aware of the requirements and how the duty is to be delivered then they will be informed when communicating with their constituents and be able to defend good practice. Ensure that those who are involved in day-to-day operations understand what the duty means in practice, this may be Tree Surveyors who need to record trees that are proposed for removal and where the duty to consult applies. Highway & Transport Professionals will need to be able to participate in the

process of considering objections and providing guidance in relation to design and engineering solutions and provide associated costs. Asset Management Software and GIS Specialists may be able to assist in managing data to make it easier to identify which trees are applicable to the duty, for example asset management systems could be configured to eliminate trees that are on 'Trunk' or 'Classified' roads from the need to engage in consultation, where trees are not exempt, an attribute could be included in the digital asset which allows for the need to consult to be recorded and reported on, ensuring that the duty is complied with. Communication is crucial to ensuring that your Highway Authority is aware of the duty and can consider necessary resource requirements to be compliant with the legislation. Consider setting out how the duty to consult is complied within any existing or new Tree Policy.

4. Set out what the consultation process looks like in practice:

- Prepare a template felling notice, this should include the necessary information as is set out in Section 10 of the DEFRA guidance, including any proposals to replace the tree(s).
- Ensure that the notice is accessible to all. Develop a procedure for attaching notices to trees with robust fixings and for making copies available to view either digitally or in the form of a physical copy.
- Prepare a means of allowing people to make representations. This should allow interested parties to submit representations electronically, for example via email or a web-based form, and by hard copy, by providing a postal address to which written objections can be sent.
- Prepare a template representation acknowledgement. This should set out that the Highway Authority acknowledges receipt of a representation, that it will be considered by the Authority and that a decision will be sent to interested parties. This acknowledgement should be informative and include timeframes that help to manage the expectations of interested parties.
- Prepare a system of monitoring and managing the objections process. This is key to ensuring that the deadlines that are set out in the DEFRA guidance are adhered to, (for example making sure that 28 days is allowed in full following the attaching of any felling notice to a tree).

5. Develop a process of assessing objections. A consistent and methodical approach should be taken, and considerations such as tree condition, amenity value and life expectancy should be taken into account, alongside the cost implications of tree removal or retention, for example relating to remedial pruning or footway repair.

6. Prepare a template consultation response and a template notice. This should include the necessary information and procedures as set out in Section 14-16 of the DEFRA guidance.
 - Ensure that interested parties are made aware of the Highway Authority complaints procedure, for example be in the form of a link to the Authority procedures web page and by providing a postal address
 - Ensure that the consultation response notice is accessible. Develop a procedure for attaching notices to trees and for making copies available to view either digitally or in the form of a physical copy.
 - Develop a procedure to ensure that trees are not removed until after 28 days following the consultation response being made available/published and attached to the tree.
 - Develop a pro-forma that serves to provide evidence that a tree was exempt from the Duty to Consult.
 - Ensure that records of the consultation are retained for further inspection, for example be in the form of a digital record being saved against the tree asset data.

Important considerations

7. There is likely to be considerable officer time and cost associated with setting up and/or adapting platforms and processes to comply with the duty to consult.
8. The operational costs to manage the duty to consult are likely to vary across authorities, but even if the operational costs are low, there are likely to be additional costs in officer time to demonstrate that an exemption from the Duty to Consult applies (see sections 21, 22, 23 of the DEFRA guidance).
9. A 'new burdens' payment to local authorities from Central Government has been made. If you have not received this payment into your budgets, check with your finance department to see if it is possible to recover the money into the relevant tree budget.
10. Many street trees will be outside the scope of the duty to consult. Of note, see section 4 of the DEFRA guidance 'Trees in Scope'. Trunk roads and classified roads are exempt from the duty to consult. *This means that any trees on A roads, B roads and what were formerly C roads are exempt from the duty to consult.*

11. In addition to the 'Trees in Scope' in section 4, the duty to consult does not apply if the tree is exempt (section 19 of the DEFRA guidance).

12. With regard to setting up or adapting platforms and processes to comply with the duty to consult, consider:

- Could your existing tree management systems be adapted to provide a public, web based platform for consultation. For example, Confirm or Ezytreev.
- Could you adapt existing processes which inform the public of proposed tree removal to a consultation process.
- Does your local authority have an existing general consultation platform that you could access, for example [Commonplace](#) .
- Could you use and/ or adapt existing Traffic Management Order (TMO) consultation processes to comply with the duty to consult.
- What processes can you use or adapt to ensure notices are placed on the tree(s) of intent to fell (section 8 of the DEFRA guidance) and response to the consultation (section 14 of the DEFRA guidance)
- If no digital platform is capable of being created, then an interim or long term solution to make documents available at the local authority offices should be considered (sections 8 and 14 of the DEFRA guidance).

13. Consider the timelines involved if you have to consult on the removal of a street tree. The DEFRA guidance says that a 28 day period for consultation is required (section 8b). You must then publish a decision/ response and post a notice on the tree, for at least 28 days before the tree is removed (section 14 of the DEFRA guidance). Importantly if there is a decision to remove the tree, the DEFRA guidance says the notice should remain on the street tree or trees in question and available online/in an office until such time as the tree is felled. Whilst section 13 of the DEFRA guidance says that the Council has up to 2 years to remove a tree after consultation, there can be little guarantee that a notice would remain on a tree for up to two years after a decision to remove it. As such, it is likely to be more practical to remove the tree as soon as possible after 28 day period allowed for the decision to be published and notified.