



Department
for Environment
Food & Rural Affairs

Protecting and enhancing England's trees and woodlands **Consultation**

December 2018



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Ministerial foreword

Trees are a critical component of the country's green infrastructure network, and a precious natural asset which we must protect for future generations. In urban areas, trees play a pivotal role in creating healthy and economically successful communities, helping to clean and cool the air, reduce flooding, and improve people's physical and mental health and wellbeing. We recognise that local communities often feel passionate about the trees in their local area. While tree felling is an essential part of the cycle of tree-management it can generate local concern, especially when there is a lack of clarity about why the tree is being felled.



In 2017 we made a manifesto commitment to introduce a duty to consult on the felling of urban street trees. In this consultation, we set out our vision for how this duty could work in practice, alongside other possibilities for proposals to introduce a duty on local authorities to report on their tree felling and planting activities, and best practice guidance on Tree and Woodland Strategies. Together, these will bring greater accountability and transparency to the process of street tree felling. They will set a new standard of stakeholder engagement and ensure that local residents have access to information and are provided with sufficient opportunities to voice their concerns. In addition to these duties, this consultation also asks for views on a series of new measures intended to give the Forestry Commission more powers to address illegal felling and protect wooded landscapes. Taken together, all four of these ideas could deliver enhanced protection to the natural environment and I look forward to receiving the responses to this consultation.

A handwritten signature in blue ink, appearing to read 'DR', with a long horizontal stroke underneath.

DAVID RUTLEY MP
Parliamentary Under Secretary of State

General Information

Purpose of this consultation

This consultation seeks views on the UK government's proposals to introduce four new measures designed to increase transparency and accountability in the process of felling street trees and to strengthen the Forestry Commission's power to tackle illegal tree felling. Two of the measures introduce new duties on local authorities: a duty to consult on the felling of street trees; a duty to report on tree felling and replanting; while the third suggests the production of best practice guidance to support local authorities in drawing up, consulting on and publishing a Tree and Woodland Strategy. The duty to consult is intended to ensure that members of the public are appropriately consulted on the felling of street trees, which can contribute positively to the quality of life for people in urban areas. The duty to report would require local authorities to collate and report information on the felling and replanting of trees in a uniform way. This would increase transparency and allow the government to monitor tree felling at a national level, helping to make sure we maintain and enhance the natural capital benefits of trees. Tree and Woodland strategies would help local authorities to set out the principles that support their tree management activities, thus both increasing transparency and accountability and improving stakeholder and public engagement. The fourth measure is intended to give the Forestry Commission more powers to tackle illegal tree felling and strengthen protection of wooded landscapes. All of these proposals could contribute to the protection and enhancement of the natural environment, and help deliver the government's ambitious 25 Year Environment Plan. This consultation seeks views on these measures and their implementation.

How to respond

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

We encourage respondents to make use of the online e-Consultation platform <https://consult.defra.gov.uk/>. It is the government's preferred method of receiving responses. However, you can also submit responses in writing to:

Climate and Forestry team
1st floor, Seacole Building
2 Marsham Street
London.
SW1 4DF

or by email to Dan.Doherty@defra.gov.uk

Responses must be received by **28 February 2019**.

We may also run stakeholder events during the consultation – please register your interest with Dan.Doherty@defra.gov.uk if you would like to attend.

Additional copies

You may make copies of this document without seeking permission. An electronic version can be found at <https://consult.defra.gov.uk/>. Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

Confidentiality and data protection

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes these are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA). We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances.

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

This consultation is being conducted in line with the Cabinet Office “Consultation Principles” and be found at: <https://www.gov.uk/government/publications/consultation-principles-guidance>.

If you have any comments or complaints about the consultation process, please address them to:

Consultation Coordinator

Area 1C, 1st Floor

Nobel House

17 Smith Square,

London, SW1P 3JR.

Or email: consultation.coordinator@defra.gsi.gov.uk

1. Context and scope

Background

The UK government recognises that urban trees play a pivotal role in creating healthy and economically successful communities and places for people and wildlife to live.

Trees bring nature to the heart of our urban communities, where most people live and work. They help clean and cool the air, reduce flooding, and improve people's physical and mental health and wellbeing.

Government has a range of policies and grants to encourage the planting and sustainable management of trees in rural areas - such as the development of a new Northern Forest, increased protection for ancient woodland, and the commitment to plant 11m new trees by 2022. There are, however, fewer policies in place to enhance the status and protection of urban trees.

The management of urban trees is generally the responsibility of local authorities. Increasing the accountability and transparency of tree management by local authorities will help ensure that local residents are fully involved in shaping and benefiting from the green spaces they live, work, and play in.

Although trees planted along highways have many benefits, they also pose challenges to maintaining safe, accessible highways. Local authorities are obligated by the Highways Act 1980 to maintain safe roads, and felling trees as part of this obligation does not require a felling licence from the Forestry Commission. The management of highway trees is one of the subjects covered by the guidance of the UK Roads Liaison Group, "Well Managed Highway Infrastructure: a Code of Practice", published by the Department for Transport.

While tree felling is necessary as part of the cycle of tree management, it can generate local concern. Trees are generally valued by local communities as they contribute to the character of a place and offer high public amenity value, in addition to the ecosystem services they provide. In recognition of this the government committed to placing a **duty on local authorities to consult** before felling street trees in the 2017 manifesto.

To ensure transparency at the national level, and uniformity in the way that local authorities collect and record data on their tree management activities, the government is seeking views on whether there should be a **duty on local authorities to report on tree felling and planting**.

Government is also seeking views on whether government should produce best practice guidance to support local authorities in drawing up, consulting on and publishing **Tree and Woodland strategies**. Such strategies would enable local authorities to take a long-term, strategic approach to managing their trees and woodlands, and provide another route for local authorities to set out their tree policies clearly to the public and increase transparency and accountability.

Finally, government is also proposing to **strengthen measures to enable the Forestry Commission to tackle illegal tree felling**, in a context beyond that of urban street trees. The proposed changes would greatly strengthen the Forestry Commission's ability to apply and enforce the felling licence regime and thereby protect wooded landscapes across England.

Current policy landscape

There is currently no statutory obligation for local authorities to consult on the felling of street trees, hold data on their tree felling and management activities, or any best practice guidance on how to publish a Tree and Woodland Strategy.

While most authorities keep some records there is no consistency in the data nationally.

The Forestry Act 1967 currently governs the felling licence system used to regulate tree felling, which is administered by the Forestry Commission. In the felling licence system, a licence is required before trees are felled, unless one of the statutory exemptions for the need for a licence applies. Applications for a licence are placed on a public register, giving residents or other interested parties an opportunity to lodge their views. The Forestry Commission also retains data on the number and type of felling licences approved, and the trees to be replanted as a condition of the licence being granted.

Several exemptions apply to the felling licence system. In particular, local authorities acting in their role as statutory highways authorities do not require a licence to fell street trees which interfere with the maintenance of the highway. There are several other areas – such as the management of parks – where local authorities are also responsible for managing trees but do not require licences.

We believe that giving residents a greater say in the management of street trees, and making data on tree felling and replanting more readily available, will improve the quality of decision making around trees managed by local authorities.

Objectives

There can be genuine reasons for tree felling, and these proposed duties are not intended to detract from the professional knowledge and arboricultural expertise of Tree Officers and local authorities, who are best-placed to make decisions about the management of trees in their area.

The two new duties and proposal for best practice guidance have been designed to support and increase transparency and accountability in the tree felling process. They will ensure that local residents are adequately consulted, have the opportunity to voice their concerns, and enable government to monitor tree felling at a national level.

The forestry enforcement measures are intended to strengthen the government's ability to tackle illegal tree felling.

Territorial extent

As Forestry is a devolved issue these measures would only apply to England.

2. Duty to consult

Government has a manifesto commitment to introduce a duty on local authorities to consult on the felling of street trees. This would apply to individual street trees which are to be felled, unless they meet certain exemption criteria.

Local authorities sometimes consult with local communities prior to felling trees, but there is wide variation across the country, meaning some communities have little say over the fate of the trees in their area.

Those local authorities that currently consult typically do so in order to inform the public of reasons behind felling that may be perceived as contentious (such as removal of healthy or prominent mature trees). There are currently no government standards or guidelines for local authority street tree management, and so the decision to consult is individual to each local authority.

Given the general public support for street trees and current lack of accountability associated with street tree felling in some local authorities, we believe there is a need for greater community engagement in decision-making affecting street trees.

Government intends to introduce a duty on local authorities to consult with local communities to ensure that consultation takes place when a street tree is to be felled, and that the consultation process meets certain standards. Communities will have an opportunity to understand why a tree is being felled within their local area and if necessary to raise concerns regarding the felling of trees that will be heard by the local authority.

This will contribute to mitigating the current limitations in the governance and management of street trees and empower local communities to have their say in decisions affecting street trees and to hold local authorities to account for their actions.

Giving the public a greater say in street tree management would reduce the likelihood of street trees being felled without good reason, ensuring that there is transparency and accountability in the decision making process.

Scope

The duty to consult will apply to the felling of 'street trees.' For the purpose of this consultation 'street trees' are defined as managed trees lining the highway within the urban environment.

The duty to consult would **not** apply to other urban trees such as parks or public spaces or trees alongside roads not in urban settlements.

Who should be consulted and how?

Government has considered different options for consultation detailed below.

Option A: Full Consultation: Consult on every tree proposed for felling during a four week consultation period.

A notice inviting consultation to be placed on the tree, letters sent to local residents in close proximity to the tree (100m²), and a notice published in the town hall and online.

Option B: Closed Consultation: Consult on every tree proposed for felling during a four week closed consultation period.

A notice inviting consultation to be placed on the tree, letters sent to local residents in close proximity to the tree (100m²).

Option C: Closed Consultation with trigger point: Consult on every tree proposed for felling during a four week closed consultation period.

A notice inviting consultation to be placed on the tree, letters sent to local residents in close proximity to the tree (100m²).

If more than 50% of respondents in the closed consultation disagree with the proposal this will trigger a full public consultation.

Government's preference is for Option C.

Trees of special historic or cultural significance

Trees designated as having special historic or cultural significance would automatically be subject to wider public consultation. To meet this definition trees would have to meet one of the following criteria. The tree may be:

- culturally, historically, ecologically significant – such as veteran trees
- linked to a person or event that is culturally or historically significant

For trees that meet this criteria an extraordinary measure/action or level of resource can be taken or dedicated to its preservation. The local authority may initially be unaware of this significance so a full consultation where significance is suspected or raised as an issue is essential.

Exemptions

Street trees are often felled for one of several common reasons which could be the basis for exemption from the duty to consult.

1. **Dangerous:** Tree needs to be felled because it presents an immediate danger and work is urgently needed to remove that danger. Trees that immediately affect the operational use of the footway by people – forcing them to use the carriageway – are considered dangerous for the purposes of this policy.
2. **Responding to a pest or disease instance:** Removal of a tree is a critical part of the implementation of a management or control programme, following notification by regulatory authority in response to a pest or disease instance.
3. **Dead.**
4. **Damaging:** Tree needs to be felled because it is causing significant damage to the apparatus of a statutory undertaker (such as gas, electricity or water) where urgent access is required for repair; or tree needs to be felled because it can be demonstrated that it is causing significant damage and threatens the integrity of a footpath or carriageway to such an extent that it presents an imminent danger.
5. **Young Trees Damaged/Failed:** Young trees (up to fifteen years old) which will be replaced within two years. The position of the tree has already been established. Consultation could lead to discussion that undermines that decision when replacement is essentially a maintenance management activity.

Some exemptions will be necessary to ensure that Councils are able to take swift action to fulfil their wider duties, for example where trees are endangering public safety. Our view is that dangerous, responding to a pest or disease instance and dead trees must be exempt from the duty to consult, because their removal in as timely a manner as possible is necessary, but that damaging trees and young trees should not be exempt.

Q1. Should a duty for local authorities to consult on the felling of street trees be introduced? Please give reasons for your response.

Q2. Do you agree with the proposed scope of the duty to consult? Please give reasons for your response.

Q3. Do you agree with the government's preferred approach of a closed consultation with trigger point? Please give reasons for your response.

Q4. In what circumstances do you think a tree should be exempt from the duty to consult? Please give reasons for your response.

Q5. Do you think it is appropriate that trees of special historic or cultural significance are subject to a more rigorous consultation process? Do you agree with the criteria for designating a tree of special historic or cultural significance? Are there any other categories which should be included?

Q6. Do you think that the duty to consult will have any negative impacts on development?

Q7. Should consultations be done on an individual basis or in groups of trees where, for example, trees are planted in the same location?

3. Reporting on felling and planting of trees by local authorities

Currently, the Forestry Commission collects data on trees felled when a felling licence is required, and any compensatory planting that takes place. However, felling licences are not required in many situations where local authorities are responsible for managing trees, including street trees, trees in parks, and trees felled as part of the planning process. More information on tree felling and planting by local authorities would help government and the public to develop a better understanding of the drivers of tree felling and planting, as well as help track our aspiration to increase forest cover in England to 12% of land area by 2060.

Trees under local authority management provide a wide range of social, environmental and economic benefits to local communities. Felling trees often generates concern within the local communities who value these trees.

Local communities want to understand the justification for removing trees and what plans local authorities have for replanting felled trees. Communities should feel empowered to influence decisions about whether or not to fell trees and the extent and location of

replanting. Alongside the duty to consult, the proposed duty to report will increase the transparency of felling and planting actions by local authorities, thereby enabling communities to hold local authorities to account for their actions.

The duty to report will also allow local and national government, community groups, non-government organisations and the scientific community to develop a stronger understanding of where trees are being cut down and why, helping to improve our understanding of tree management and protect and enhance the environmental and other benefits of trees.

There is currently no requirement for local authorities to collate or report information on the felling or replanting of trees. While some local authorities have inventories of trees under their management, this information is not collected or recorded in a uniform manner. For example some (mostly urban) local authorities have electronic inventories that are linked to Geographic Information System (GIS), while others record tree information in paper form.

The policy is intended to introduce a duty on local authorities to report tree felling and planting activities in a uniform way to increase transparency and ensure that current deficiencies in the governance and management of trees are mitigated.

Scope

Local authorities would be required to record on felling and planting activity for which they are both directly and indirectly responsible, including trees which are felled as part of planning decisions.

Local authorities are directly or indirectly responsible for tree felling in different ways. Some trees – such as street trees or trees in parks – are managed directly by local authorities. Others, such as trees felled or planted as part of planning decisions, are not directly managed by local authorities but are affected by their decision making.

Local authority responsibilities for felling include:

- trees felled which are managed directly by the local authorities and which are exempt from felling licences
- felling as a result of planning decisions
- felling as a result of interventions on trees with Tree Preservation Orders

Local authority responsibilities for planting include:

- compensatory planting as a result of felling activities
- planting on new trees which are managed by the local authority

- compensatory planting as a result of planning decisions

What information should be reported?

There are various kinds of information on trees which might be useful to capture through the duty to report. These include:

- date of felling/planting
- location of tree
- job number
- species of tree
- reason for felling

How should local authorities report this information?

Local authorities could make this information publicly available by uploading it to an online portal hosted by the government. Updates should be undertaken regularly.

Q8. Should a duty on local authorities to report on tree felling and planting be introduced? Please explain the reasons for your answer.

Q9. Which trees would it be useful to report on? Please explain the reason for your answer.

Q10. What information do you think local authorities could gather and hold? Please explain the reasons for your answer.

Q11. How could local authorities present this information? Should national government play a role in collating and managing information?

4. Tree and woodland strategies

Tree and Woodland strategies are local authority documents which set out the policy framework, and management approaches, for trees and woodlands, based on an assessment of the local authority's tree and woodland resource.

There is currently no requirement for local authorities to produce Tree and Woodland Strategies. Although some local authorities already publish substantive documents, there is no uniformity and some authorities do not publish anything at all. The availability of best practice guidance will allow local authorities to produce strategies that are consistent with other strategies in their content. This will ensure that the overarching principles of long term tree and woodland management are universally applied and that everyone has the opportunity to influence the future of their local tree and woodland resource.

Tree and Woodland Strategies help local authorities to quantify and value the natural capital value of this critical component of the green infrastructure network. They provide the basis for long-term thinking and enable local authorities to plan for a resilient resource through long-term adaptive responses to climate change and to pest and diseases. Tree and Woodland Strategies enable easy identification of important areas of work. They also assist bids for resources and co-ordination of actions to achieve woodland aims and objectives.

Tree and Woodland Strategies also help to create greater transparency and accountability, providing another route by which local authorities can explain their policies and decision-making process to local residents. Local residents take a keen interest in the trees in their communities, and should be able to influence and monitor decisions affecting the felling and replanting of trees. Tree and Woodland Strategies will improve stakeholder and public engagement with local tree management.

Decisions on how trees and woodlands are managed should be taken by local authorities. There should, however, be core topics which are covered by a Tree and Woodland Strategy; including the following sections:

1. **Assessment and valuation of current tree stock:** the strategy should assess the nature of the tree stock, its function and value. Valuation of the current tree stock can help to demonstrate that, whilst tree management brings costs to local authorities, these costs are often balanced out by the benefits and services provided by trees, such as carbon sequestration and air pollutant removal.
2. **Geographical Assessment:** it would be useful if the strategy covered all trees within the local authority's geographical boundary, with a brief consideration of the broad topography, geology and soil conditions.
3. **Benefits of Trees and Woodlands:** the social, economic and environmental benefits that trees and woodlands bring to an area should be highlighted. The strategy could also touch on the dis-advantages of where trees have not been planted in the right place.
4. **Sustainable Tree Management:** Local authorities should explain their rationale / criteria for conducting management activities as part of a sustainable approach to tree management.
5. **Tree Planting:** Local authorities should set out the principles which underpin the planting of trees on land under local authority control; this could include long term issues such as species diversity, longevity and succession of the tree stock.
6. **Sustainable Woodland Management:** any local authority that owns or manages areas of woodland should include a specific section on sustainable woodland management.
7. **Biodiversity:** the strategy should consider its contribution to biodiversity, for example by referencing Biodiversity 2020 <https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services> and the objectives of any local biodiversity action plans.
8. **Enhancing biosecurity:** the strategy should set out the actions to enhance biosecurity, reduce the impacts of tree pests and diseases, and build the

resilience of trees, for example in reference to the environmental goals of the Tree Health Resilience Strategy (extent, connectivity, diversity and condition). <https://www.gov.uk/government/publications/tree-health-resilience-strategy-2018>

9. **Climate Change:** the strategy should identify the vulnerability of the tree stock to climate change and set out approaches to address this vulnerability', and could consider how trees can help mitigate the impacts of climate change in the local environment, for example cooling through shading.

Local residents should be consulted on Tree and Woodland Strategies before they are finalised.

Q12. Do you agree that Tree and Woodland Strategies help local authorities and the public to manage their trees and woodlands? Would best practice guidance be sufficient for local authorities and the public? Please give reasons for your response.

Q13. Do you agree with the suggested content for best practice guidance for Tree and Woodland Strategies? Please give reasons for your response.

5. Forestry enforcement measurements

The UK government proposes to introduce measures that will strengthen environmental protection by giving the Forestry Commission more powers to address illegal felling.

The Forestry Act 1967 is over 50 years old and was designed to allow the Forestry Commission (FC) to regulate the forestry sector primarily in relation to timber extraction, which was then the main source of deforestation. It is now out of date and further measures are required to update the current felling licence system. Nine measures are proposed to tackle this problem:

1. Giving the Forestry Commission the power to apply to the courts to direct land owners to replant trees on land which has been both illegally felled and where current replanting directions (via Restocking and Enforcement Notices) have been ignored.
2. Giving the Forestry Commission the power to direct an individual to replant trees on land which they have subsequently sold, subject to the permission of the new landowner.
3. Giving the Forestry Commission the power to force the cessation of tree felling in an area while an investigation into illegal felling is taking place.
4. Create a legal requirement on the owner of land, where illegal felling has taken place, to notify the Forestry Commission if they sell the land. This will simplify the process of tracking who it is who needs to be served with Restocking and Enforcement Notices, directing individuals to replant trees.

5. New powers to identify and pursue a suspected instigator of illegal felling, where the person suspected of felling illegally is not, and has never been, the legal owner of the land. Historically, felling was generally undertaken by landowners themselves (or people employed by them). The picture now is more complex, particularly in respect of housing developers who retain the services of third parties to manage land on their behalf, and who may commit the illegal felling independently of the developer.
6. Increase fines for illegal felling. The current fine scale stems from a period where profit came from selling timber. Now the major driver of profit from illegal felling lies in the increased land value. As such, the current fining regime does not offer a sufficient deterrent. The current fine is £2,500 or twice the value of the trees felled, whichever is greater.
7. Clarify upon whom the Forestry Commission may serve a Restocking or Enforcement Notice in relation to companies that own the land. The current wording of the Forestry Act 1967 only allows the company secretary to be served a notice, whereas company directors may be more appropriate targets for enforcement measures.
8. Give the Forestry Commission powers to compel the 'owner' to provide information with regard to who else has an interest (leasehold, tenant etc.) in the land. Currently the Forestry Act 1967 only gives powers to compel the 'occupier', or 'any person who... receives rent in respect of the land' to provide this information. While the owner will be listed on HM Land Registry, demonstrating who 'occupies' a woodland is more challenging. Equally, without being privy to individual's accounts, demonstrating that they receive rent from land is even more so.
9. Clarify how Enforcement Notices are affected by a change in land ownership. It is currently unclear who is responsible (the previous owner or the new owner) for complying with an Enforcement Notice when the land changes hands during the life of that Notice. This leads to cases of non-compliance, and can collapse a criminal case before a prosecution is secured.

Q14. Do you support these measures?

Q15. Do you think any other measures are necessary to combat illegal tree felling?