

Section 115 Environment Act 2021 Duty to Consult on the Felling of Street Trees

Does the guidance provide sufficient information for the practical implementation of the Duty?

The Institute in principle supports this guidance and finds that in most instances the information is sufficient for the practical implementation of the duty as in most instances the duty would not be implemented. This is due to the level of exceptions, exemptions, and narrow scope of the duty to consult by just Local Highways Authorities (LHA) in urban areas. We are pleased to see that Local Highways Authorities (LHAs) are being advised to consider engineering solutions and tree management solutions as an alternative to felling. However, for each tree to be felled there would need to be an individual assessment and a record of which exemption or exception it falls under. This may require LHAs to amend their data collection systems to sufficiently record the requirements listed in Section 20. The requirement of additional resources needs to be considered should a tree(s) not be exempt and need to fulfil the duty to consult.

Are the timescales for consulting, receiving responses and providing a decision realistic?

We agree that 21 days is a reasonable timescale for the consultation period, but we would welcome a deadline for a local authority to report back on received responses. The use of “as soon as reasonably possible after the close of the consultation period” presents uncertainty. We recommend this process would be more effective with a time constraint to within 7-10 working days or 14 days, with guidance for extending this subject to numerous objections or responses.

In addition, we would recommend a timescale be attached to the attachment and removal of the site notices placed on the tree(s).

Furthermore, we recommend that more consideration is given to the three-year period prescribed for the consultation to stand as residents may change and this could create conflict if trees are felled towards the end of the period, rather than in the first year. This would aid with transparency and raising awareness of intended and already consulted on fells. However, this may place an added burden on LHAs to respond to the public on previously consulted fells or require them to maintain their records online for longer periods of time.

Are the exemptions sufficient to permit local authorities to manage the highway effectively?

There are many exemptions that impact this duty. The Institute feels that that this duty will be limited in addressing the intended aim to ensure the decision-making process is more transparent. We recognise that it will require improved record keeping by LHAs and website access for the public. We recommend that these administrative costs are factored into this requirement. Furthermore, the implications of opening decision making up to consultation may be interpreted to imply that there is scope to revise that decision which might be misleading to stakeholders. Under section 20, it

suggests the Public can challenge the LHA, but no process is set out for how they go about this, in what time frame and in what format this would take.

It seems like there is a conflicting interest between the desire to consult, making the public feel included within the decision-making process, but still allowing the LHA to overrule public feedback; thus, not benefiting the public as intended. We recommend that LHAs demonstrate how the stakeholder feedback has been and will be used, and how it has influenced the decision-making process, demonstrating full transparency with any stakeholders throughout the consultation process.

What additional exemptions would your organisation suggest be added if any?

The Institute has no further suggestions for exemptions as this may limit the duty to consult even further. We would welcome a conversation around any additional exemptions being considered. However, though we are pleased to see the recognition of professionals within the exemption process, clarification is needed regarding the qualification of the tree professionals authorising the exemptions and the definition of professional within this context. Also, further clarification of how the details of records will be shared with the public would be accepted, to assist with improving transparency. This would then potentially remove the possibility of stakeholders retrospectively having to raise legal challenges against the LHA for clarification as to whether they have followed due practice.

Are there any showstoppers within the guidance that would prevent you from implementing the new Duty?

We do not foresee any showstoppers that would prevent our members from implementing the new duty as there appears to be limited scope to apply the duty to consult, other than time and resources to carry out the duty. There is the general feeling that this consultation is more around the justification to not consult, based on the narrow scope being LHA and the definition of trees being just “street trees.” We do express concern that the definition of a “street tree” needing to be on an urban road also will exclude a large proportion of trees, particularly those in a more rural or semi-rural context. The Institute would recommend that the scope also includes trees on land adjacent to the highway in parks, un-adopted roads, Highways England projects and trees on highways maintained by other authorities. Therefore, extending the responsibilities to consult to other authorities.