

Management of the risk from falling trees

SIM 01/2007/05

Target Audience:

**FOD Inspectors
Local Authority Enforcement Officers**

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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 HSE's 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 outwith 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 down load 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.