



Llywodraeth Cymru
Welsh Government

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Preserving trees and woodlands: new regulations

We want your views on proposed regulations for the protection of trees and woodlands.

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Overview

For over 80 years, trees and woodlands that are of special amenity value have been protected by preservation orders. Works to such trees and woodlands require consent to be obtained from the planning authority, subject to various exceptions. If consent is not obtained, the carrying out of such works is a criminal offence.

The Planning Act 2008 introduced a simpler system of control, so that preservation orders in future will be much simpler whilst retaining the existing level of protection for trees and woodland. The procedure for making an order, the exceptions to the need for consent to be obtained, and the procedure for obtaining consent will all be contained in a single set of regulations.

It is envisaged that the new system introduced by the 2008 Act will be brought into effect in Wales when the Planning (Wales) Bill comes into force, and if approved by the Senedd, accompanied by a new set of regulations.

This consultation document explains the changes that will be introduced in the new regulations, provisionally to be entitled the Planning (Wales) (Tree Preservation) Regulations, and invites stakeholders to express views on those changes.

The associated guidance relevant to trees and woodlands will also be updated in due course.

1. Introduction

1.1 This consultation relates to proposed changes to the law protecting trees and woodlands in Wales. In particular, it invites the views of stakeholders on the

principles underlying new Planning (Tree Preservation) (Wales) Regulations – referred to in this document as “the new regulations”.

1.2 The Planning (Wales) Bill (“the Bill”), which is expected to be laid before the Senedd towards the end of this Senedd term, is a consolidation Bill that will restate all of the primary legislation relating to planning in Wales. It will, in particular, replace the Town and Country Planning Act (“TCPA”) 1990, as it applies in Wales.

1.3 The Bill will contain the primary legislation relating to the protection of trees and woodlands, replacing Chapter 1 of Part 8 of the TCPA 1990 and section 192 of the Planning Act 2008. It will be accompanied by a new set of tree preservation regulations, which will come into force at the same time. It is those regulations that are the subject of this consultation document.

1.4 The Bill and the accompanying regulations will also incorporate the recommendations made by the Law Commission in Chapter 15 of its 2018 **Final Report on Planning Law in Wales**, insofar as they have been accepted by the Welsh Government. Those recommendations have been subject to public consultation.

1.5 Alongside the introduction of the Bill, consequential changes will be made to other legislation, and these will include restating section 193 of the 2008 Act, which deals with preservation orders that are already in force when the Bill comes into effect.

1.6 The relevant pieces of existing and proposed legislation and related documents are listed in Annex 1 to this document.

1.7 New guidance will in due course be issued to replace some or all of the documents listed in Annex 2.

Consultation on promoting a resilient and high performing planning service

1.8 There is also a current consultation being undertaken seeking views on improving the resilience and performance of planning authorities. that will close on 17 January 2025. This includes the potential to charge fees for applications where there is currently no charge such as for Tree Preservation Order applications.

2. Background

Background

2.1 Trees – whether individual specimens, groups or in woodlands – are appreciated and valued by some, but they are inconvenient to others. And they are subject to the forces of nature, and so will need to be pruned, lopped or topped from time to time, and may become diseased, or dangerous, or die. Owners of trees may therefore wish (or may be required) to carry out works for the felling of trees, or other works to them; and such proposals may be resisted.

2.2 More significant felling operations generally require a felling licence to be obtained from Natural Resources Wales (NRW), under the Forestry Act 1967. But that requirement is subject to numerous exceptions, and does not apply to operations other than felling.

2.3 Some trees and woodlands are considered worthy of special protection, on account of their amenity value. Planning authorities and the Welsh Ministers have been able to protect them by making a “tree preservation order”.

2.4 Once an order has been made to protect a particular tree, the carrying out of

works to it – cutting it down, topping, lopping or uprooting it, or intentionally or recklessly damaging or destroying it – then requires consent to be obtained from the authority. But this does not apply if the works come within one of a number of specified exceptions – such as the removal of a tree that is dangerous, or where its removal is needed to implement a grant of planning permission.

2.5 This enables the need for such works to be balanced against the desirability of retaining the tree. If consent is refused, or granted subject to conditions, an appeal may be made to the Welsh Ministers. And if such a decision leads to loss or damage, compensation may be payable.

2.6 Where works are proposed to a tree in a conservation area that is not protected by a tree preservation order, it is necessary for notice to be given to the relevant planning authority – again, subject to certain exceptions. This enables the authority to decide whether to impose an order to protect the tree; if it does so, consent will be needed for the works, and the tree will be protected in the future.

2.7 Where works are carried out to a tree protected by a tree preservation order without consent, or where works are carried out to a tree in a conservation area without notice having been given, that will constitute a criminal offence – unless they come within one of the relevant exceptions. It will also be necessary to plant a replacement in such cases, and in certain other circumstances.

3. The current and new systems of tree protection

3.1 Substantial changes to Chapter 1 of Part 8 of the TCPA were made by section 192 of the Planning Act 2008. The system in existence prior to the coming into force of those changes is referred to in this consultation document as “the current system”; the system introduced by the 2008 Act is referred to as “the new system”.

The current system

3.2 In short, under the current system, the relevant Act empowers planning authorities and the Welsh Ministers to make preservation orders to protect trees and woodlands considered to be of amenity value. Such powers have been included in all the planning Acts since 1943. The order was to be made in line with the model order in force at the time, provided either in guidance (prior to 1969) or in regulations (thereafter). There are still in existence orders made many decades ago under those provisions.

3.3 Regulations under the Act provided for the procedure as to the making of a preservation order. Those currently in force in Wales are the Town and Country Planning (Trees) Regulations 1999 (SI No 1892) – referred to in this consultation document as “the 1999 Regulations”.

3.4 Once an order had been made in relation to a particular tree, consent was required for carrying out of works to it, subject to exceptions – some specified in the Act (sections 198(6), (7) and 200 of the TCPA 1990), and some in the relevant order. And the procedure for applying for such consent was specified in the order, along with the entitlement to compensation in the event of an adverse decision.

3.5 As a result, every order was lengthy and difficult to understand – see, for example, the Model Order in the Schedule to the 1999 Regulations (“the 1999 Model Order”). And the various exceptions from the need for consent were in different places. Further, any changes to the regulations (or the model order in the regulations) introduced after the making of the order were irrelevant; changing policy approaches could only be given effect by making a fresh order.

3.6 An order under the current system can be made so as to come into effect only once it had been confirmed. Alternatively, it can be made so as to come into effect immediately, on a provisional basis, but only to remain in effect until it had

been confirmed. In practice almost every order has been made on the latter basis – to avoid the trees in question being pre-emptively felled.

The new system

3.7 Under the new system, the primary legislation provides for the making of tree preservation regulations; and the regulations provide for the making of an order, and almost all the exceptions from the need for consent to carry out works. The regulations also provide for the procedure to obtain such consent, and the entitlement to compensation. The order itself simply specifies the trees or woodlands to be protected, by reference to a schedule and a map.

3.8 This means that an order made under the new system is much shorter and more straightforward. And any changes to the regulations are given effect immediately, regardless of when the order was made.

3.9 Every order under the new system comes into effect immediately, on a provisional basis, but only remains in effect for six months unless it is confirmed within that period.

3.10 Section 193 of the Planning Act 2008 dealt with tree preservation orders that were in force at the date on which the new system comes into effect. It provides that any order made under the current system is to have effect as though it had been made under the new system. The details of the exceptions from consent, the procedure for obtaining it, and the entitlement to compensation, are thus to be discovered by inspecting the regulations currently in force, and anything in the order other than the details of the trees or woodlands being protected is to be disregarded.

3.11 The changes made by the 2008 Act do not affect the need to notify works to trees in a conservation area that are not protected by an order.

Coming into effect of the new system

3.12 Sections 192 and 193 of the Planning Act 2008 – and the changes to the TCPA 1990 made by section 192 – have not yet been brought into force in Wales. It is proposed that section 192 will be effectively incorporated into the Planning (Wales) Bill, which will restate Chapter 1 of Part 8 of the TCPA 1990 in its amended form, introducing the new system. This will be accompanied by consequential changes to other legislation, including section 193 of the 2008 Act, dealing with preservation orders that are already in force when the Bill comes into effect.

3.13 For the new system to operate effectively, there will need to be in place a set of tree preservation regulations applying in Wales. They will operate in the same way as the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (SI 605) (referred to in this consultation document as “the 2012 Regulations”) in England, but will not be identical to them. In particular, the Law Commission in the *Planning Law in Wales* report recommended some changes that could be made to the control regime under the 1999 Regulations. These proposed changes are highlighted in the remainder of this document.

4. Woodland preservation orders

4.1 Under the current system, a tree preservation order can protect a specified single tree, a specified group of trees, all trees within a specified area, or all trees within a specified woodland. The Law Commission noted that the Court of Appeal, in *Evans v Waverley BC* (1995), had recognised that an order protecting a woodland was a “different animal” from one protecting an area of trees – and, by implication, even more different from an individual or group order.

4.2 The differences are as follows:

- a woodland order applies to protect all trees within the specified woodland, regardless of whether they were planted (or self-seeded) before or after the order was made, whereas any other order applies so as to protect only individual trees that were in existence when the order was made;
- there is, arguably, a presumption in favour of consent being granted – at least for operations that accord with the practice of good forestry; for other orders, there is a presumption against consent being granted;
- there are special provisions as to imposing a requirement to replant woodlands felled with consent under a woodland order in the case of forestry operations;
- there are special provisions as to the compensation that may be claimed following the imposition of such a requirement; and
- the duties as to the replacement of trees are slightly less onerous, in that they do not apply to trees felled in a woodland without consent because they are dying, dead or dangerous.

4.3 Recommendation 15-3 in the *Planning Law in Wales* report was therefore that a tree preservation order protecting a woodland should be referred to as a “woodland preservation order”, and that the relevant legislation could apply accordingly. That recommendation was accepted by the Welsh Government, and it is anticipated that the Bill will be framed by reference to the two types of order. The new regulations will apply to both.

4.4 In this consultation document, the terms “order” and “preservation order” are generally used to refer to both tree and woodland preservation orders.

5. Tree preservation regulations

5.1 These proposed new regulations are based on the current regulations applying in Wales (Town and Country Planning (Trees) Regulations 1999

(SI1892SI No 1892)) with changes as outlined in this paper. These have also been informed by the regulations in England which support the system introduced by the Planning Act 2008 - the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (SI No 605).

5.2 It is anticipated that the Bill will contain general powers for planning authorities and the Welsh Ministers to make two types of orders in the interests of amenity:

- a tree preservation order, to preserve the individual trees, groups of trees and areas of trees specified in the order; and
- a woodland preservation order, to protect the woodlands specified in it.

5.3 It is likely that the Welsh Ministers will only use their powers in exceptional circumstances.

5.4 The Bill will also include provisions enabling the Welsh Ministers to make regulations (“tree preservation regulations”) about tree preservation orders and woodland preservation orders, and detailing what may be contained in such regulations. This consultation document relates to the new regulations that are expected to be made under this power.

5.5 The regulations would come into force on the same date as the part of the Bill containing these powers.

6. Interests of amenity: factors that may be taken into account

6.1 A planning authority or the Welsh Ministers may make a tree or woodland preservation order where they consider that to do so would be “appropriate in the interests of amenity”.

6.2 Paragraphs 15.18 and 15.23 of the Law Commission's *Planning Law in Wales* Final Report stated as follows:

“ The general perception as to the value of trees, both by professionals and the public, is now based on a significantly wider range of factors than visual amenity alone. This is particularly so in relation to ancient, veteran and heritage trees. We thus considered [in our consultation paper] that it would be desirable to make it plain that a tree preservation order may be made on the basis of factors other than visual appearance. To do so would both clarify the law and bring it into line with current thinking as to the basis on which an order ought to be made.

“ ... this is clearly a matter where guidance should play a major role. However, we consider that it would be helpful, by one means or another, to confirm in legislation the broad principle that trees may be protected for reasons other than just their appearance. ”

6.3 Recommendation 15-2 was therefore that tree preservation regulations may prescribe matters considered relevant to amenity. It was agreed by Welsh Government that the definition of amenity has changed over the years and now extends beyond visual amenity and that it should be clarified in legislation.

6.4 In line with that recommendation, it is proposed that the Bill will provide that the regulations may specify factors that must be taken into account in determining whether it is appropriate in the interests of amenity. We set out below the matters that we consider are relevant.

6.5 We consider that the matters to be taken into account when making a tree preservation order to protect one or more trees (whether specified individually or by reference to one or more groups or areas) should include the following:

(a) the age and rarity of the trees that are to be protected by the order;

- (b) the appearance of those trees, on their own and in the context of their surroundings;
- (c) the contribution to biodiversity that may be expected to be made by those trees, on their own and in the context of their surroundings; and
- (d) the historic, scientific and recreational value of those trees, on their own and in the context of their surroundings.

6.6 We consider that the matters to be taken into account when making a woodland preservation order to protect one or more woodlands should include the following:

- (a) the age and rarity of the trees within the woodlands that are to be protected by the order;
- (b) the appearance of those woodlands, and the trees within them, on their own and in the context of their surroundings;
- (c) the contribution to biodiversity that may be expected to be made by those woodlands, on their own and in the context of their surroundings; and
- (d) the historic, scientific and recreational value of those woodlands, on their own and in the context of their surroundings.

Question 1: Do you agree with the lists of matters to be taken into account in paragraphs 6.5 and 6.6 of this Document when making a tree preservation order or a woodland preservation order in the interests of amenity?

7. Making, varying or revoking preservation orders

7.1 The regulations will provide that the form of a preservation order (that is, a

tree preservation order or a woodland preservation order) is to be in the form set out in the Schedule to the Regulations, or in a form substantially to the same effect. The form of an order under the new system will be significantly simpler than the form of an order under the current system.

7.2 We propose that the new regulations will provide that a tree preservation order should be in the form set out at Annex 3 to this document, and that a woodland preservation order should be in the form set out at Annex 4. The regulations will also provide that, in the event of any discrepancy between the schedule and the map, the map is to prevail.

Question 2: Do you agree with the sample tree preservation order in Annex 3 to this Document? Do you have any suggestions for improvements?

Question 3: Do you agree with the sample woodland preservation order in Annex 4 to this Document? Do you have any suggestions for improvements?

7.3 Regulations may also provide, for both tree and woodland preservation orders:

- (a) the procedure to be followed in connection with making, varying or revoking an order,
- (b) when an order is to take effect,
- (c) if an order is not to take final effect until it has been confirmed, who is to confirm it, how it is to be confirmed, and how it takes effect provisionally until it is confirmed, and
- (d) how an order is to be published and made available for public inspection.

7.4 These matters have always been dealt with in regulations. They thus form the content of **Part 2 of the 1999 Regulations**. We consider that the new regulations should deal with them in similar terms, save as noted below.

7.5 First, they will contain a provision as to the procedure to be followed after the making of an order. This will mirror regulation 3 of the 1999 Regulations, save that it will require that notice of the order is given to:

- (a) all those interested in the land affected by the order – which will be defined to include any parcel of land on, in, or above which any part of the protected tree is situated; and
- (b) in the case of an order made following the notification of proposed works to a tree in a conservation area that is not currently protected by an order, the person providing that notification.

7.6 Second, they will contain provisions equivalent to regulations 4 to 9 of the 1999 Regulations, relating to:

- (a) objections and representations to an order;
- (b) procedure for confirmation of an order (see paragraph 7.8);
- (c) action after confirmation of an order;
- (d) action where an order is not confirmed;
- (e) variation of an order; and
- (f) revocation of an order.

7.7 They will contain new provisions requiring that, where an order is being confirmed,

- (a) it must not be modified so as to add a tree to which the draft order did not previously apply;
- (b) an order protecting trees by reference to an area must be modified so as to become an order protecting trees specified either individually or as a group.

7.8 This is a change from the current position in the 1999 Regulations. Law Commission Recommendation 15-3(3), as accepted by the Welsh Government, was that a new area order should provide protection only until it is confirmed, at which time it must be converted into an order specifying the trees to be protected either individually or as a group.

7.9 Third, the regulations will contain a new provision to the effect that every order comes into effect immediately, on a provisional basis, but only remains in effect for six months unless it is confirmed.

Question 4: Do you agree with the proposed procedure for making tree and woodland preservation orders? Do you have any suggestions for improvements?

8. Activities that may be prohibited by a tree or woodland preservation order

8.1 Tree preservation regulations may prohibit any or all of a number of specified activities in relation to trees in respect of which a preservation order is in force. The regulations may provide for exceptions to those prohibitions. And they may, in particular, provide that the prohibited activities may be carried out if they have been the subject of a grant of consent.

8.2 This brings the prohibition and exceptions into the regulations themselves, replacing the current system whereby the prohibition against carrying out works without consent is in article 4 in the 1999 Model Order (or in the equivalent provisions in earlier model orders), and the exceptions to that prohibition are partly in the Act and partly in the order itself (which would have been made in accordance with the model order in force at the time).

8.3 We consider that the new regulations should provide that no person shall:

- (a) cut down, top, lop or uproot any tree to which an order applies;
- (b) intentionally or recklessly damage or destroy such a tree; or
- (c) cause or permit the carrying out of any of those activities

except with the written consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

Question 5: Do you agree with the types of works that are to be prohibited by a tree or woodland preservation order as set out in paragraph 8.3? Do you have any suggestions for improvements?

9. Exceptions from the need for consent

9.1 It would be unsatisfactory if consent had to be obtained for works that were trivial, works that were urgently necessary, or works that had already been authorised in some other way. The law has accordingly always provided that consent is not required in certain circumstances.

9.2 Under the current system the exceptions are contained partly in sections 198(6) and (7) and 200 of the TCPA 1990 and partly in article 5 of the 1999 Model Order; similar provisions were included in earlier model orders. Under the new system, the exceptions will generally be found in the new regulations and will apply to trees protected by both tree and woodland preservation orders.

9.3 We propose to include all of the exceptions in a Schedule to the new regulations, for ease of reference. This means that the relevant regulation can merely provide that the general prohibition does not apply to the carrying out of

works in any of the categories in [Schedule X].

9.4 It should be remembered that these exceptions only result in consent under the regulations not being required for the specified categories of tree works. Other types of works can be carried out perfectly lawfully, but only once consent has been obtained.

9.5 We describe below the proposed exceptions in more detail.

Dead, dying and dangerous trees

9.6 Under the current system, section 198(6) of the TCPA 1990 provides that consent is not required for “the cutting down, uprooting, topping or lopping of trees which are dying or dead or have become dangerous”. This leads to several problems. First, it is not clear when a tree is “dying”, or when “it has become dangerous”. Nor is it always clear, in either case, how much work can be done without consent. Secondly, a dead tree may provide valuable habitat for wildlife; so there is no justification for consent being automatically granted for the removal of a dead tree that is not dangerous.

9.7 However, we consider that it should be possible to remove a dead branch of a tree without consent, as part of routine tree maintenance.

9.8 And it should be possible to carry out works that are immediately necessary to remove any danger that may be caused by a defective tree or a defective part of a tree, which may be liable to fall at any moment – not least to remove possible liability in negligence or under the Occupiers’ Liability Acts.

9.9 In other cases, it may be perfectly appropriate to carry out works to a particular tree that is considered to be dying or dead, but the desirability for such works should be tested in response to an application for consent.

9.10 We therefore propose that the new regulations should contain two

categories of exception, as follows:

Class A. Dead branches

The removal of dead branches from a living tree.

Class B. Works to avoid danger

The cutting down, topping, lopping or uprooting of a tree, to the extent that such works are urgently necessary to remove an immediate risk of serious harm, or to such other extent as may be agreed in writing by the authority prior to the works being undertaken.

9.11 This follows the general approach adopted in Scotland, where there is no exception for dead and dying trees. But the detailed wording of Class B is expected to follow regulation 14(1)(c) of the 2012 Regulations applying in England which outlines an exception where the tree is dangerous and not dead or dying. It thus implements Law Commission recommendation 15-6, which was the subject of consultation and was accepted by the Welsh Government.

9.12 However, we consider that there should be a proviso that works may only be carried out without consent in reliance on the exception in Class B if written notice of them is given to the authority as soon as practicable after the need for them has become apparent. This may be very obvious, as where a tree is struck by lightning, or it may emerge as the result of a consultant's report. Such a condition is not included in the 1999 Regulations, but it will help to minimise the chances of the exception being abused, and it will enable the authority to consider the need for a replacement to be planted.

Question 6: Do you agree with the proposed exceptions relating to the removal of dead branches (Class A)? Do you have any suggestions for improvements?

Question 7: Do you agree with the proposed exceptions relating to works to remove a risk of harm (Class B)? Do you have any suggestions for improvements?

Works necessary to comply with statutory or other obligations

9.13 In some cases the owners of trees may be obliged to carry out works to protected trees as the result of an Act of Parliament or some similar obligation. Section 198(6)(b) of the TCPA 1990 accordingly provides that consent is not required for the cutting down, uprooting, topping or lopping of any trees in compliance with any obligations imposed by or under an Act of Parliament. And article 5(1)(aa) and (ab) of the 1999 Model Order (inserted by Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006 (SI No 1282) provides that consent is not required for certain highways works or for works needed for national security.

9.14 The basis for these exceptions is that the process of granting approval in Parliament or elsewhere may be assumed to have included a balancing of the need for the proposed works against the desirability of retaining the protected trees.

9.15 We propose to retain this position. The new regulations will therefore retain the exception, in similar terms, as follows:

Class C. Works to comply with statutory or other obligations

(1) The cutting down, topping, lopping or uprooting of a tree in compliance with any obligation imposed by or under an Act of Parliament or an Act of the National Assembly for Wales or the Senedd Cymru.

(2) The cutting down, topping, lopping or uprooting of a tree required to enable the implementation of an order made or confirmed under paragraph 8(1) or paragraph 15(1) of Schedule 1 to the Highways Act 1980 (procedures for making or confirming certain orders or schemes).

(3) The cutting down, topping, lopping or uprooting of a tree urgently necessary for national security purposes.

Question 8: Do you agree with the proposed exceptions relating to works to comply with statutory or other obligations (Class C)? Do you have any suggestions for improvements?

Works by statutory undertakers and other public bodies

9.16 Article 5(1)(a) of the 1999 Model Order provides that consent is not required for routine works carried out by statutory undertakers to protected trees. Article 5(1)(e), 5(1)(f) and 5(1)(g) provides that consent is not required for such works carried out by various other public bodies.

9.17 This is on the basis that such bodies may be trusted to carry out such works responsibly, and to have balance the need for the proposed works against the desirability of retaining the protected trees. But it only relates to routine works and not to, for example, the removal of trees to enable major new works (although they may be subject to the exception under Class E, below).

9.18 We therefore propose that the new regulations should retain the exception, in similar terms, as follows:

Class D. Works by statutory undertakers and other public bodies

(1) The cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary —

(a) in the interests of the safe operation of its undertaking;

(b) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or

(c) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;

(2) The cutting down, topping, lopping or uprooting of a tree by or at the request of NRW to enable it to carry out development permitted by or under the general permitted development regulations; or

(3) The cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works; or

(4) The felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989 (other powers etc of licence holders – felling and lopping of trees etc).

In paragraph D(1), “*statutory undertaker*” has the meaning given by section [XXX] of the Planning (Wales) Act [20XX]; and in paragraph D(3), “*drainage*

body” and “*drainage*” shall have the same meanings as in section 72(1) of the Land Drainage Act 1991.

Question 9: Do you agree with the proposed exceptions relating to works by statutory undertakers and other public bodies (Class D)? Do you have any suggestions for improvements?

Works required to carry out development

9.19 It will sometimes occur that planning permission is applied for to carry out development on land on which there are trees protected by a tree or woodland preservation order. The planning authority or the Welsh Ministers, in considering such an application, will consider the desirability of preserving the tree. If permission is nevertheless granted, that will mean that the need for (or the desirability of) the development is considered to outweigh that of retaining the tree – and permission may be granted subject to conditions requiring new trees to be planted.

9.20 This exception applies both where planning permission is granted either in response to an application (or appeal) and where it is granted in some other way, such as in response to an enforcement appeal or in the course of confirming a discontinuance order. It also applies where permission is deemed to be granted for development authorised by a Government department.

9.21 In such a case, it would be administratively burdensome for consent under the new regulations to be required to fell the tree. Article 5(1)(d) of the 1999 Model Order accordingly provides an exception from that requirement.

9.22 But the exception does not apply where permission is granted by a development order or a local development order.

9.23 We therefore propose that the new regulations should retain this exception as follows:

Class E. Works required to carry out development

(1) The cutting down, topping, lopping or uprooting of a tree so far as such work is necessary to implement a planning permission granted or deemed to have been granted under the Planning (Wales) Act [20XX].

In paragraph E(1), the reference to a planning permission does not include:

- (a) an outline planning permission under section [XXX] of the Planning (Wales) Act [20XX]; or
- (b) without prejudice to paragraph D(1)(c), a permission granted by a development order made under [Chapter 2 of Part X] of the Act (planning permission granted by order).

Question 10: Do you agree with the proposed exceptions relating to works necessary to implement a planning permission (Class E(1))?

9.24 The same principle applies (by virtue of section 198(7)(a) of the TCPA 1990), where opencast coal mining was authorised under the Opencast Coal Act 1958, to take place on land on which there were protected trees. Such authorisation would have taken account of the presence of the trees.

9.25 We therefore propose that the new regulations should contain this exception, as follows:

Class E. Works required to carry out development

(2) The cutting down, topping, lopping or uprooting of a tree where the tree is on land that is subject to opencast coal mining that has been authorised under section 1 of the Opencast Coal Act 1958 before 4th December 1987, save where the tree was subject to a designation under section 2(4)(c) of that Act.

Question 11: Do you agree with the proposed exceptions relating to works necessary to implement an authorisation under the Opencast Coal Act 1958 (Class E(2))?

9.26 However, we are aware that no consent under the 1958 Act has been issued since the procedure under that Act was abolished in 1986; and we should be interested to discover whether this exemption (under section 198(7)(a) is ever relied upon in practice.

Question 12: Do you have any experience of any cases involving the removal of trees needed to carry out works authorised under the 1958 Act? If yes, can you provide any details?

Works to fruit trees

9.27 Under article 5(1)(b) and (c) of the 1999 Model Order, consent is not required for routine works to fruit trees. We propose that the new regulations should contain this exception, in similar terms, as follows:

Class F. Works to fruit trees

- (1) The cutting down, topping, lopping or uprooting of a tree that is cultivated for the production of fruit in the course of a business or trade, where such work is in the interests of that business or trade.
- (2) The pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit..

Question 13: Do you agree with the proposed exception relating to works to fruit trees (Class F)?

9.28 A question that occasionally arises is whether a tree cultivated for the production of fruit includes a nut tree. We would welcome any views on this point.

Question 14: Do you consider that the regulations should define “fruit tree” so as to include “nut tree”?

Forestry operations

9.29 Section 200(1)(a) of the TCPA 1990 provides that consent under the tree preservation regulations is not required for operations carried out by NRW or the Forestry Commission, as they may be presumed not to carry out works that would be undesirable.

9.30 Section 200(1)(b) and (2) similarly provides that such consent is not required where works are carried out in accordance with a plan that has been approved by NRW or the Commission either under a forestry dedication covenant or under the conditions of a grant.

9.31 We consider that this exemption from consent should be extended to plans approved by NRW for grants provided by Welsh Government, as well as private sector long term forestry management plans also approved by NRW.

9.32 We consider that it would be more helpful if this exception were contained in the regulations, along with all of the other exceptions. We therefore propose that the new regulations should contain this exception, in similar terms, as follows:

Class G. Forestry operations

(1) The cutting down, topping, lopping or uprooting of a tree by or on behalf of NRW on land placed at its disposal under the Forestry Act 1967 or otherwise under its management or supervision.

(2) The cutting down, topping, lopping or uprooting of a tree by or on behalf of any other person in accordance with a relevant plan that is for the time being in force.

In this Class, “a relevant plan” means a plan of operations or other working plan

(a) approved by the Forestry Commission or NRW under a forestry dedication covenant under section 5 of the Forestry Act 1967, or

(b) approved by the Forestry Commission or NRW under the conditions of a grant or loan

(i) made by the Forestry Commission under section 1 of the Forestry Act 1979, or

(ii) made by NRW under article 10B of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903), or

(c) approved by NRW under the conditions of a grant or loan made by the Welsh Government, where the operations relate to felling or thinning, or

(d) approved by NRW as a long-term forest management plan as developed by NRW for the private forestry sector, and

a reference to anything done by NRW includes a reference to anything done by the Forestry Commissioners prior to 1 April 2013.

Question 15: Do you agree with the proposed exception relating to forestry operations as set out in paragraph 9.32 (Class G)?

Works to prevent or abate a nuisance

9.33 Section 198(6)(b) of the TCPA 1990 contains an exception for works “necessary for the prevention or abatement of a nuisance”. This is not being restated in the Planning (Wales) Bill, as the Planning Act 2008 provided that the inclusion of particular exceptions will in future be a matter for regulations, not primary legislation.

9.34 The term “nuisance” refers to the situation where a tree is growing on land owned by person A, its roots extend into the soil of the neighbouring property owned by person B, and its branches into the airspace above that property. At common law, B has a right to “abate” that nuisance by cutting back the roots and branches to the boundary between the two properties. But the precise extent of the phrase “works to abate a nuisance” in the context of a tree or woodland preservation order is uncertain, which can lead to an inconsistent approach to works to protected trees.

9.35 It is also illogical that, where the roots of a protected tree are causing structural problems to a nearby building on the same property, consent will be required to carry out necessary remedial works – whereas the exception may allow a protected tree on a neighbouring property to be cut back without

consent. It would be preferable for the planning authority to be able to determine in both cases the acceptability of the proposed works on the basis of the need for them, in response to an application, rather than being unable to be involved merely because the tree happens to be on neighbouring land.

9.36 The Law Commission in its Consultation Paper on *Planning Law in Wales* accordingly recommended that the nuisance exception should not be included in the new regulations, as that would provide clarity and balance; it would allow the authority to consider in every case the alleged need for works – for example because a tree is merely encroaching across a boundary without causing any significant damage, or because it is resulting in significant subsidence – against the effect of those works on amenity, without being concerned as to the ownership of the tree.

9.37 That recommendation (15-7) was overwhelmingly supported by stakeholders and Welsh Government supported the recommendation as it was agreed that this would provide clarity and balance allowing the planning authority to consider any alleged nuisance against any effect on amenity that would arise as a result of the proposed remedial works. We therefore do not propose to include such an exception in the new regulations.

10. Conservation area trees: cases where notice of tree works does not need to be given

10.1 It is normally necessary to give notice to the planning authority of proposed works to trees in a conservation area that are not subject to a preservation order, in order to provide an opportunity for the authority to make an order to protect the tree. But regulations under section 212 of the TCPA 1990 may specify cases where that requirement does not apply.

10.2 **Regulation 10** in the 1999 Regulations currently provides that the

requirement does not apply in relation to:

- (a) works specified in section 198(6) of the TCPA 1990 and
- (b) works specified in in article 5 of the 1999 Model Order, and
- (c) various forestry operations (as mentioned in paragraphs 9.29 and 9.32 above);
- (d) works that have been granted a felling licence;
- (e) works by or on behalf of a planning authority; and
- (f) various works to small trees.

10.3 Categories (a) to (c) together include the various types of works specified in Classes A to F, together with works necessary to prevent or abate a nuisance.

10.4 Category (d) is included to avoid the need for an additional authorisation process to be undertaken in a case where NRW has already considered the desirability of the proposed works.

10.5 Category (f) refers to:

- (a) the cutting down or uprooting of a tree whose diameter does not exceed 75mm, or 100mm where the works are to improve the growth of other trees; and
- (b) the topping or lopping of a tree whose diameter does not exceed 75mm.

For this purpose the diameter of a tree is to be ascertained by measuring it (over its bark) at 1.5m above ground level – in the case of a multi-stemmed tree, it is the diameter of the largest stem.

10.6 For the reasons set out at paragraphs 9.33 to 9.37 above, we do not propose to restate the exception relating to works necessary to prevent or abate a nuisance. Otherwise, we consider that these exceptions should generally be carried forward into the new regulations – bearing in mind the points made above in relation to the various classes.

Question 16: In relation to the need to notify works to trees in a conservation area not protected by a preservation order, do you consider that the current exceptions are appropriate?

10.7 The exception in category (f) (relating to works to small trees) has been in place for many years; but we would be interested to learn from stakeholders whether they consider the specified dimensions to be appropriate.

Question 17: Do you consider that the exception relating to works to small trees in conservation areas is appropriate?

11. Applications for consent for prohibited activities

11.1 Where consent is required for the carrying out of works to protected trees, it is necessary to apply for it to the planning authority – the county or county borough council, or the national park authority where there is one.

11.2 The 1999 Regulations provide for the submission and determination of such applications, effectively creating a consent regime similar to, but slightly simpler than, the regime governing the submission and determination of applications for planning permission.

11.3 Since 2012, the provisions as to the submission of an application have been contained in **regulation 9B**, which was inserted by Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2012 (SI No 792).

11.4 The provisions as to the determination of an application have been contained in various provisions of the TCPA 1990, applied by Schedule 2 to **the 1999 Model Order**, as follows:

- (a) TCPA 1990, section 69: register of applications;
- (b) TCPA 1990, section 70(1): determination of applications (trees other than those in woodlands); and
- (c) TCPA 1990, section 70(1A): determination of applications (trees in woodlands); and
- (d) TCPA 1990, section 75: effect of consent.

11.5 We consider that the new regulations should include provisions equivalent to those in regulation 9B of the 1999 Regulations and the provisions identified in paragraph 11.4 above.

Question 18: Do you consider that the current consent procedures under the 1999 Regulations operate satisfactorily? Do you have any suggestions for improvements?

11.6 The regulations should also include a provision requiring the authority to acknowledge an application, as recommended by the Law Commission in its report on *Planning Law in Wales* (Recommendation 15-10). This was accepted by the Welsh Government.

11.7 Consent may be granted subject to conditions. We propose that the regulations should provide for the types of conditions that may be imposed, as follows:

- (a) conditions limiting the duration of the consent,
- (b) conditions requiring approvals to be obtained from the planning authority;
- (c) conditions specifying the standard to which the works for which consent has

been given must be carried out;

(d) conditions specifying that the works may be carried out on multiple occasions or within a specified time period only or both;

(e) conditions requiring trees to be planted, including conditions about how, where or when planting is to be done; and

(f) conditions requiring things to be done, or installed, for the protection of any trees planted in pursuance of conditions within paragraph (e).

11.8 We also consider that there should also be a provision to the effect that, unless otherwise stated in a condition,

(a) any consent is to be valid for a period of two years beginning with the date of its grant; and

(b) the works for which such consent is granted may only be carried out once.

Question 19: Do you consider that the list of types of conditions that may be imposed on a consent are appropriate?

11.9 Section 202D(5) and (6) of the TCPA 1990, inserted by the Planning Act 2008, enables regulations to include a provision by which an authority granting consent for the felling of a tree protected by an order can impose that order on new trees planted by way of replacement. We do not suggest the regulations should include such a provision, as we consider that it is more appropriate for a new order to be made in such circumstances.

11.10 It may be noted that this is distinct from the position that arises where a tree preservation order is made to protect trees that are to be planted under a condition attached to a planning permission (for example, as part of the landscaping scheme associated with a new housing development). In that case, an order may be made to protect the new trees from the date they are planted.

Question 20: Do you agree that it is inappropriate to extend an existing preservation order to protect a new tree required to be planted and a new preservation order would need to be made if appropriate?

11.11 Section 70(1B) of the TCPA 1990, as applied by Schedule 2 to the 1999 Model Order, provides that consent for works to trees in a woodland may not be subject to a replacement planting condition, but may be accompanied by a direction securing replanting. We cannot see a distinction between the two, and consider that it is more straightforward simply to allow for consent under a woodland preservation order to be subject to a replacement planting condition (see paragraph 11.7(e) and (f)). We therefore do not consider that there needs to be a separate provision in the new regulations equivalent to section 70(1B).

Question 21: Do you consider that there needs to be a provision enabling a planning authority to impose a direction to secure the replacement of trees in a woodland, rather than imposing a replacement planting condition?

12. Restrictions relating to forestry

12.1 Tree preservation regulations have always had effect subject to the legislation relating to forestry. The relevant provisions are currently to be found in section 15 of the Forestry Act 1967 (applications for a license to fell trees to which a tree preservation order applies).

12.2 Schedule 8 to the Planning Act 2008 made amendments to section 15, to

reflect the introduction of the new system of tree preservation orders. It also introduced new paragraphs 2A and 3A into Schedule 3 to the 1967 Act. It is anticipated that those amendments will effectively be introduced in Wales by the coming into effect of the Planning (Wales) Bill.

12.3 Where works to trees that are protected by a preservation order are such that they require a felling licence under the 1967 Act, section 15(5) provides that no application for consent under the order (under the current system) or consent under the regulations (under the new system) is to be entertained by the planning authority. Instead, an application is to be made to the appropriate forestry authority (NRW in Wales) for a felling licence. There are then three possibilities.

- First, if NRW is content to allow the felling, it must notify the planning authority under section 15(1)(a), and the authority can then object. If the authority does object, NRW is to refer the proposal under section 15(2)(a) to the Welsh Ministers, who are to deal with it “under the Town and Country Planning Acts”. Under paragraph 2A of Schedule 3 to the 1967 Act, once it is in force in Wales, that means that they “must decide the application as if it were an application for consent for the felling of trees made under the tree preservation regulations”.
- Second, if NRW is not concerned one way or the other, it can refer the application to the planning authority under section 15(1)(b), and the authority will then deal with the application under the planning Acts (under section 15(3)(a)). Under paragraph 3A of Schedule 3, that means that the planning authority must decide the application as if it were an application under the regulations. In practice, this option is rarely if ever relied on, and the NRW will always make a decision.
- Third, if NRW is not content to allow the felling, regardless of the view of the planning authority, it will simply refuse to grant a licence. Any felling taking place would then be unlawful, so the question of consent under the preservation order legislation does not arise.

12.4 Under the old paragraph 2 of Schedule 3, to be replaced by paragraph 2A, an application was to be dealt with by the Minister as if it had been called-in under section 22 of the TCPA 1962 – and if the relevant order did not incorporate a call-in procedure, it was to be assumed that it did. The only Model Order that did include such a procedure was in the Schedule to the 1969 Regulations (SI 1969/17), which applied section 22 so as to provide as follows:

“(4) Where an application for consent is referred to the Minister under this section, the provisions of articles 4 and 5 of the order [applications for consent under the order] shall apply as they apply to an application which falls to be determined by the authority.

(5) Before determining an application referred to him under this section, the Minister shall, if either the applicant or the authority so desire, afford to each of them an opportunity of appearing before and being heard by, a person appointed by the Minister for the purpose.

(6) The decision of the Minister on an application referred to him under this section shall be final.”

12.5 We consider that it would be helpful for the regulations to include a provision in similar terms, which would apply where an application is to be determined by the Welsh Ministers after it has been referred to them under paragraph 2A of Schedule 3 to the 1967 Act. Such a provision would apply the provisions referred to under the previous heading above (consent for prohibited activities).

Question 22: Do you agree that there should be a provision that explicitly governs the determination of an application for a felling licence referred to the Welsh Ministers under the Forestry Act?

12.6 It may be noted that amendments were made to the Forestry Act 1967 by the Agriculture (Wales) Act 2023, in relation to the amendments of licences granted for the felling of trees subject to a tree preservation order. However, they are not relevant to the making of regulations as proposed in this consultation document.

13. Works by planning authorities

13.1 A special procedure applies for works to protected trees owned by planning authorities and works by authorities to other protected trees. This ensures that applications for such works are properly publicised, and that they are not determined by the officer, committee or sub-committee responsible for the management of the land concerned, so as to avoid any possible conflict of interest.

13.2 The procedure is currently to be found in:

- (a) regulation 11A of the Town and Country Planning General Regulations 1992 (SI No 1492), inserted by regulation 17(c) of the 1999 Regulations: publicity for applications for consent for tree works by planning authorities; and
- (b) regulations 11(2) and (3) of the 1992 Regulations, inserted by regulation 17(b) of the 1999 Regulations: determination of such applications.

13.3 We consider that the new regulations should include provisions equivalent to these. That would enable the 1999 Regulations to be replaced in their

entirety, insofar as they apply in Wales.

Question 23: Do you consider that the present arrangements for handling applications by planning authorities for their own works operate satisfactorily? Do you have any suggestions for improvements?

14. Appeals relating to decisions on applications for consent

14.1 The 1999 Regulations provide that an appeal may be made:

- (a) against a refusal of consent for works to trees, or where there is a failure to decide an application for such consent;
- (b) against conditions subject to which such consent is granted; and
- (c) against the refusal of an application for an approval required by such a condition, or where there is a failure to decide such an application.

We refer to such appeals as “tree consent appeals”.

14.2 At present, the relevant provisions as to tree consent appeals are to be found in sections 78 and 79 of the TCPA 1990, as applied (with amendments) by Schedule 2 to the 1999 Model Order; and section 79 refers to section 70(1), (1A) and (1B) of the TCPA 1990, as thus applied (see above). That Schedule to the Model Order was amended in 2017 (by [Town and Country Planning \(Trees\) \(Amendment\) \(Wales\) Regulations](#) (SI No 548)).

14.3 These provisions, which are not easy to access, effectively create an appeals regime similar to, but slightly simpler than, the regime governing the making and determination of appeals in connection with planning applications.

14.4 We consider that the regulations should include provisions making equivalent provisions, adjusted to fit in with the remainder of the regulations (including, referring to woodland preservation orders).

14.5 As for the detailed procedure to be followed in dealing with tree consent appeals, that is the subject of the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 (SI No 544). Those regulations deal with all such appeals – whether dealt with on the basis of written representations (as occurs in the great majority of cases), or following a hearing or inquiry – see regulation 2(2)(b)(i).

14.6 We consider that it will continue to be helpful for all provisions as to appeals procedures, including those relating to trees, to be in one place. We therefore propose to adjust regulation 2(2)(b)(i) in the 2017 Regulations, and paragraph (a)(vi) of the definition of “full statement of case” in regulation 3, to take account of the new tree preservation regulations. But otherwise those Regulations can continue to operate satisfactorily.

Question 24: Do you consider that the present arrangements for handling tree consent appeals operate satisfactorily? Do you have any suggestions for improvements?

15. Entitlement to compensation

15.1 Compensation is not generally payable where planning permission or listed building consent is refused. However, it is payable where consent is refused (or granted subject to adverse conditions) for works to a tree required by a tree or woodland preservation order – or where an approval required by a condition of such consent is refused.

15.2 The current provisions as to entitlement to compensation are in article 9 of the 1999 Model Order. Save as noted below, there is no intention to change the basic principles. We therefore consider that the provisions as to compensation in article 9 will be restated in the new regulations, although we propose to separate out:

(a) those applying to compensation for refusal of consent for felling under a woodland preservation order, in article 9(1), section 11(3)–(5) of the Forestry Act 1967 (applied by article 9(5)), and the definition of “owner” in section 34 of that 1967 Act (applied by article 9(6)), and

(b) the provisions applying to compensation for other decisions under a tree preservation order, in article 9(1), (2), (4) and (6) (definition of “development value”).

15.3 In relation to the latter, there also needs to be a provision that replaces section 205 of the TCPA 1990 (prior to amendment by the Planning Act 2008), in respect of compensation for a condition or direction as to the replanting of a woodland (see paragraph 11.11 above).

15.4 As to the claims procedure, we consider that this should be in a separate regulation, bringing together the provisions currently in section 205 of the TCPA 1990 (prior to amendment by Planning Act 2008) and article 9(2)(a) of the 1999 Model Order.

15.5 This would effectively provide that any claim should be made within 12 months of the decision to which it relates, and that any resulting dispute should be resolved by the Upper Tribunal in accordance with section 4 of the Land Compensation Act 1961.

Question 25: Do you consider that the present provisions as to the entitlement to compensation, and the procedure for claims, operate satisfactorily? Do you have any suggestions for improvements?

16. Compensation in cases involving an article 5 certificate

16.1 The new regulations will need to include a provision, which will apply on a transitional basis, dealing with the entitlement to compensation in the rare cases where an “article 5 certificate” is still in force. This is a certificate that used to be issued in some cases where:

- (a) consent was required under a tree preservation order made before 2 August 1999;
- (b) an application for such consent was dismissed either by the planning authority or, on appeal, by the Secretary of State, the National Assembly or the Welsh Ministers, or was granted subject to adverse conditions; and
- (c) in making that decision, the authority or the Secretary of State [etc] certified that the decision was made:

- because the tree in question has an outstanding or special amenity value, or
- in the interests of good forestry.

16.2 It used to be possible to appeal against the issue of such a certificate. Under the new system, there will be no provision in the Bill for regulations to enable an order to include such a certificate. It follows that in the future no decisions on applications for consent will be accompanied by such a certificate, and there will be no need for a mechanism to appeal against one.

16.3 However, where such a certificate has been issued at some time in the past, it will in principle remain in force indefinitely, which seems unsatisfactory. And for as long as such a certificate remains in force, no compensation is payable in respect of any decision concerning the tree to which it relates.

16.4 We consider that the new regulations should contain a transitional provision whereby:

- (a) any certificate that has been issued (under a pre-1999 order) prior to the date on which the new regulations come into force will only continue in force for a further twelve months after that date; and
- (b) where an entitlement to compensation would otherwise arise in respect of a tree consent decision made within that 12-month period, the normal compensation regime will not apply.

16.5 Once all such claims have been made and dealt with, this provision could then be revoked.

Question 26: Do you consider that the transitional arrangements set out at paragraph 16.4 of this document represent a satisfactory way of dealing with cases where an article 5 certificate remains in force under a pre-1999 tree preservation order? Are you aware of cases involving such certificates?

17. Replacement of trees

17.1 The requirement to plant a replacement tree in certain circumstances may be enforced by the issue of a tree replacement notice, currently under section

207 of the TCPA 1990 as amended by the Planning Act 2008. A sample notice is provided in [Circular 24/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirements](#). We consider that a replacement notice should replace the model form in the circular and be in the form set out at Annex 5 to this document. It is proposed that a model form will be included in guidance.

Question 27: Do you agree with the sample tree replacement notice in Annex 5 to this Document? Do you have any suggestions for improvements?

17.2 Tree preservation regulations may prescribe the circumstances in which a replacement tree must be planted where a tree subject to a tree preservation order (but not one subject to a woodland order) is removed, uprooted or destroyed, or dies.

17.3 If the exceptions from the need for consent are included as indicated at paragraphs 9.6 to 9.12 above, there will need to be a provision to the effect that a replacement tree would be required where a tree is removed without consent solely in reliance on Class B - which would retain the existing position. That means that where a tree is cut down or uprooted because it is dangerous, that does not involve a breach of the regulations, but a replacement tree must be planted – unless the authority dispenses with the requirement.

17.4 Regulations may also prescribe the circumstances in which a replacement tree must be planted where a tree in a conservation area that is not subject to a preservation order is removed, uprooted or destroyed, or dies. Here too, there will need to be a provision to the effect that a replacement tree would be required where such a tree is removed without notice having been given solely in reliance on Class B – that is, where the removal of the tree is necessary in order to remove an immediate risk of serious harm.

Question 28: Do you agree that a replacement tree should be planted where a tree that is subject to a tree preservation order or in a conservation area is removed solely in order to remove an immediate risk of serious harm? Are you able to comment on how this requirement operates in practice?

17.5 A person on whom is served a copy of a tree replacement notice – in relation to the removal of either a tree protected by a tree or woodland preservation order or one that is in a conservation area – may appeal to the Welsh Ministers against the notice.

17.6 The Bill will provide that every copy of such a notice is to be accompanied by an explanatory note as to that right of appeal. Regulation 7 of the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017 (SI No 530) contains such a requirement in relation to the service of a copy of an enforcement notice; that regulation will need to be adjusted so as to apply also to tree replacement notices.

17.7 It also provides that regulations may specify the information that must be submitted with a tree replacement appeal. This is currently provided for in regulation 9 of the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017 (SI No 530) – and we consider that it would be appropriate to include a signpost to that. Otherwise, no substantive change is needed.

17.8 As for the procedure to be followed in dealing with tree replacement appeals, that is the subject of Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 (SI No 544) (see above). Here too, those Regulations deal with all such appeals – whether dealt with on the basis of written representations, or following a hearing or

inquiry – see regulation 2(2)(e). That regulation, and several of the definitions in regulation 3, will need to be adjusted; but otherwise those Regulations can continue to operate satisfactorily.

Question 29: Do you consider that the present arrangements for handling tree replacement appeals operate satisfactorily? Do you have any suggestions for improvements?

18. Keeping of registers

18.1 Section 69 TCPA 1990, as applied by Schedule 2 to the 1999 Model Order, requires that an authority must keep a register of applications for consent (and appeals) under tree preservation orders.

18.2 Section 214 of the TCPA 1990, requires that an authority must also keep a register of notices of proposed works to trees in a conservation area. No regulations have currently been made detailing how this is to be undertaken and we are proposing to include such details in these regulations.

18.3 We consider that the new regulations should contain provisions as to both types of register, for both tree and woodland preservation orders, including:

- (a) whether any application for consent has been received or determined to carry out works to any of those trees and groups of trees that are so protected;
- (b) whether any appeal has been made in respect of any such application; and
- (c) where the land at that address is in a conservation area, whether any notification has been received of any proposal to carry out works to any tree on the land that is in a conservation area that is not protected by a preservation order.

Question 30: Do you agree that regulations should contain details of notice of proposed works to trees in a conservation area as well as the details outlined in paragraph 18.3?

Question 31: Can you provide details on how registers are maintained in practice?

19. Revocation of existing regulations

19.1 The following regulations will need to be revoked:

- (a) regulations 11(2), 11(3) and 11A of the Town and Country Planning General Regulations 1992 (SI No 1492), insofar as they apply in Wales (see paragraphs 13.2 and 13.3 above);
- (b) the 1999 Regulations (SI No 1892) (save that regulation 17 will continue to apply in England);
- (c) the Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2012 (SI No 792); and
- (d) the Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2017 (SI No 548).

19.2 These revocations will not affect the continuing validity of any tree preservation order made under the Town and Country Planning (Interim Development) Act 1943, the TCPA 1947, the TCPA 1962, the Town and Country Planning (Tree Preservation Order) Regulations 1969, or the 1999 Regulations – or the degree of protection given to any tree currently protected by such an order. But that will be subject to the consequential provisions to be introduced

alongside the new Bill, including the replacement of section 193 of the Planning Act 2008.

19.3 There will need to be a transitional provision dealing with provisional orders made under the current system and not confirmed at the date on which the new system comes into effect, to ensure that they do not simply lapse.

19.4 These revocations will not affect the processing of applications for consent and appeals under the provisions of any order under older legislation. And see part 16 above as to the need for a transitional provision dealing with the entitlement to compensation in cases involving article 5 certificates.

20. Guidance

20.1 Associated guidance will need to be updated and replaced to reflect these regulations.

Question 32: What, in your opinion, should be retained or replaced within the existing guidance (see Annex 2)?

21. Impact assessments

21.1 The new regulations will be supported by impact assessments including a Regulatory Impact Assessment. The proposals in this consultation document are broadly similar to those made in England for the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (SI No 605). The supporting impact assessment for those regulations identified that the tree function for a local authority was around 3% of the total planning function. This was then used

to inform the detailed calculations for the changes. It is proposed to use the same estimate of cost for the tree function in Wales and calculate the cost of the changes on this.

21.2 It should be noted that the outcome of the current consultation on improving the resilience and performance of planning authorities (see paragraph 1.8) may also impact on this work and will be kept under review.

Question 33: Do you agree with the proposed approach for calculating the cost impact of the changes? If not, could you provide evidence as to the cost of the tree functions for planning authorities in Wales.

22. Effect on the Welsh language

22.1 The new regulations will be available in both Welsh and English. This will improve their accessibility to all those living and working in Wales. We are not aware of any other likely effects, positive or negative, on the Welsh language. But we are particularly interested in discovering any effects they may have on opportunities to use the Welsh language, and on not treating the Welsh language less favourably than English.

Question 34: We would like to know your views on the effects that the new regulations would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 35: Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

23. Other points

23.1 We have asked a number of specific questions. If you have any points to make about related issues that we have not specifically addresses, we should be pleased to receive them.

Annex 1: relevant legislative material

A. Existing primary legislation in Wales:

1. Town and Country Planning Act 1990, **Part 8, Chapter 1**, as it currently applies in Wales
2. Planning Act 2008, **sections 192, 193** (applies in England and Wales, but not yet in force in Wales)

B. Existing secondary legislation in Wales:

1. Town and Country Planning (Trees) Regulations 1999 (**SI 1892**), as they currently apply in Wales (following amendment by SIs **2012/792**, and **2017/548**)
2. Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 (**SI 544**)

C. Proposals for change:

1. Law Commission report *Planning Law in Wales*, November 2018, HC 1788, **Chapter 15 (Protected Trees and Woodlands)**
2. **Detailed response** from Welsh Government to Law Commission recommendations, November 2020

D. Proposed primary legislation in Wales:

1. Planning (Wales) Bill [20XX], Part XX (Preservation of Trees and Woodlands)

E. Secondary legislation in England:

1. Town and Country Planning (Tree Preservation) (England) Regulations 2012 (**SI 605**)

F. Other relevant legislation

1. Forestry Act 1967 (esp. [section 15](#)), originally applied in England, Wales and Scotland
2. Natural Resources Wales (Functions) Order 2013 ([SI 755](#)), amends the 1967 Act in Wales
3. Forestry and Land Management (Scotland) Act 2018 (Consequential Provisions and Modifications) Order 2019 ([SI 734](#)), amends the 1967 Act in England and Wales

Annex 2: relevant policy material

A. Existing guidance:

1. [Planning Policy Wales](#), Edition 12, February 2024 (especially paras 6.4.15 to 6.4.17, *the Step-Wise Approach*, and paras 6.4.33 to 6.4.44, *Trees, Woodlands and Hedgerows*)
2. Welsh Office [Technical Advice Note \(Wales\) 10](#), *Tree Preservation Orders*, October 1997
3. [Protected Trees: Guidance on tree preservation orders](#), 2017

B. Circulars:

1. Welsh Office [Circular 64/78](#), *Trees and Forestry*, 3 May 1978
2. Welsh Office [Circular 61/92](#), *Indicative Forestry Strategies*, 15 December 1992
3. Welsh Office [Circular 24/97](#), *Enforcing Planning Control: Legislative Provisions and Procedural Requirements*, 31 December 1997 (Annex 2, paras 2.58 to 2.66 and Appendix 4; Annex 6, paras 6.15 to 6.19)

C. Guidance from Natural Resources Wales (NRW) on [Woodlands and forests](#)

Annex 3: form of tree preservation order

Planning (Wales) Act [20XX]

The [title of Order (including year)]

The [*insert name of planning authority*], in exercise of the powers conferred on it by [section [XXX(1)]] of the Planning (Wales) Act [20XX] (“the Act”) makes the following Order—

Citation

1. This Order may be cited as [*insert title of Order (including year)*].

Interpretation

2. (1) In this Order “the Authority” means the [*insert name of planning authority making the Order*].
3. (2) In this Order any reference to a numbered section is a reference to the section so numbered in the Planning (Wales) Act [20XX] and any reference to a numbered regulation is a reference to the regulation so numbered in the Planning (Wales) (Tree Preservation) Regulations [20XX].

Effect

3. —(1) This Order takes effect provisionally at [*specify time*] on the date on which it is made, except in relation to a tree to which article 4 applies.
 - a. No person shall—

- i. cut down, top, lop, uproot, wilfully damage, or wilfully destroy any tree specified in the Schedule to this Order, or any tree in a group of trees or in any area so specified; or
- ii. cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of any such tree,

except with the written consent of the Authority in accordance with [Part - X of the Planning (Tree Preservation) (Wales) Regulations 20XX] (“the Regulations”), or of the Welsh Ministers in accordance with [Part X] of the Regulations, and, where such consent is given subject to conditions, in accordance with those conditions.

- 1. Sub-paragraph (2) shall not apply to the carrying out of works in any of the classes of works specified in [Schedule X] to the Regulations.

[Application to trees to be planted pursuant to a condition

- 4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under [paragraph (a) of section XXX] of the Act (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.]

Dated this [*insert date of Order*] day of [*insert month and year*]

[If the planning authority’s standing orders require the sealing of such documents:]

The Common Seal of [*insert name of planning authority*] was affixed to this Order in the presence of

.....]

[If the planning authority's standing orders do not require the sealing of such documents:]

[Signed on behalf of the *[insert name of planning authority]*]

.....

Authorised by the Authority to sign in that behalf]

[Confirmation of order

This Order was confirmed by *[insert name of planning authority]* without modifications on the *[insert date of confirmation]* day of *[insert month and year]*

Article 3(2), 4

SCHEDUL
E

SPECIFICATION OF TREES

Trees specified individually (encircled in black on the map)

Reference on map	Description	Situation
-------------------------	--------------------	------------------

[T1]	[ash]	<i>[complete if necessary to specify more precisely the position of the trees]</i>
------	-------	--

Groups of trees (within a broken black line on the map)

Reference on map	Description (including number of trees of each species in the group)	Situation
-------------------------	---	------------------

[G1]	[2 ash trees, 3 birch trees and 3 oak trees]	<i>[complete if necessary to specify more precisely the position of the trees]</i>
------	--	--

Trees specified by reference to an area (within a dotted black line on the map)

Reference on map	Description	Situation
-------------------------	--------------------	------------------

[A1]	[trees (of whatever species) within the area marked A1 on the map]	<i>[complete if necessary to specify more precisely the position of the trees]</i>
------	--	--

[A2]	[the ash, beech, larch and oak trees within the area marked A2 on the map]	<i>[complete if necessary to specify more precisely the position of the trees]</i>
------	--	--

MAP SHOWING LOCATION OF TREES

Annex 4: form of woodland tree preservation order

Planning (Wales) Act [20XX]

The [title of Order (including year)]

The [*insert name of planning authority*], in exercise of the powers conferred on it by [section [XXX(1)]] of the Planning (Wales) Act [20XX] (“the Act”) makes the following Order—

Citation

1. This Order may be cited as [*insert title of Order (including year)*].

Interpretation

2. (1) In this Order “the Authority” means the [*insert name of planning authority making the Order*].
3. (2) In this Order any reference to a numbered section is a reference to the section so numbered in the Planning (Wales) Act [20XX] and any reference to a numbered regulation is a reference to the regulation so numbered in the Planning (Wales) (Tree Preservation) Regulations [20XX].

Effect

3. —(1) This Order takes effect provisionally at [*specify time*] on the date on which it is made, except in relation to a tree to which article 4 applies.

- a. No person shall—
 - i. cut down, top, lop, uproot, wilfully damage, or wilfully destroy any tree in any woodland specified in the Schedule to this Order; or
 - ii. cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of any such tree

except with the written consent of the Authority in accordance with Part 4 of the Planning (Wales) (Tree Preservation) Regulations [20XX] (“the Regulations”), or of the Welsh Ministers in accordance with Part 5 of the Regulations, and, where such consent is given subject to conditions, in accordance with those conditions.

- 1. But sub-paragraph (2) shall not apply to the carrying out of works in any of the classes of works specified in Schedule 3 to the Regulations.

[Application to trees to be planted pursuant to a condition

- 4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under [paragraph (a) of section XXX] of the Act (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.]

Dated this *[insert date of Order]* day of *[insert month and year]*

[If the planning authority’s standing orders require the sealing of such documents:]

[The Common Seal of *[insert name of planning authority]*

Was affixed to this Order in the presence of —

.....]

[If the planning authority's standing orders do not require the sealing of such documents:]

[Signed on behalf of the *[insert name of planning authority]*]

.....

Authorised by the Authority to sign in that behalf]

[Confirmation of order

[This Order was confirmed by *[insert name of planning authority]* without modifications on the *[insert date of confirmation]* day of *[insert month and year]*

Articles 3(2), 4

SCHEDULE

SPECIFICATION OF TREES

Woodlands (within a continuous black line on the map)

Reference on map	Description	Situation
[W1]	[mixed hardwoods (mainly oak, ash and alder)]	<i>[complete if necessary to specify more precisely the position of the trees]</i>
[W2]	[mixed conifers and deciduous trees (mainly Scots pine and birch)]	<i>[complete if necessary to specify more precisely the position of the trees]</i>

MAP SHOWING LOCATION OF TREES

Annex 5: form of tree replacement notice

Important – This communication affects your property

Planning (Wales) Act [20XX], section XXX

Tree Replacement Notice

Tree Preservation Order / Woodland Preservation Order: *[where appropriate, insert title of order (including year)]*

Issued By: *[insert name of planning authority]*

1. **This notice** is served by *[insert name of planning authority]* (“the Authority”) under section XXX of the Planning (Wales) Act 20XX (“the Act”) because it appears to it that:-

[you have not complied with a duty to plant [a tree/trees] under section XXX of the Act.]

[you have not complied with a condition of consent granted under the above [tree] [woodland] preservation order requiring the planting of [a replacement tree] [insert number of trees] replacement trees.]

[you have not complied with a duty to plant [a tree] [trees] in a conservation area under section XXX of the Act.]

2. The land to which the notice relates

Land at [*insert address of land*], shown edged in red on the attached plan.

3. Reasons for serving this notice

[On or around [*insert date*], a [*give details of tree/trees*] protected by the above [*tree*] [*woodland*] preservation order was cut down on the grounds that to do so was necessary to remove an immediate risk of serious harm. Under section xxx of the Act the owner of the land is under a duty to plant another tree. It appears to the Authority that this duty has not been complied with.]

[On [*date*], the Authority granted consent to fell an [*give details of tree or trees*] protected by the above [*tree*] [*woodland*] preservation order, subject to a condition requiring the planting of [*a replacement tree*] [*insert number*] or trees] [*give details of condition*]. It appears to the Authority that this condition has not been complied with.]

[On or around [*date*], an [*give detail of tree/trees*] situated in the [*title of conservation area*] was removed in contravention of section xxx of the Act. Under section XXX of the Act the owner of the land is under a duty to plant [*a replacement tree*] [*replacement trees*]s. It appears to the Authority that this duty has not been complied with.]

[*Then set out any relevant background leading up the planning authority's decision to issue the notice (eg references to correspondence with the landowner).*]

4. What you are required to do

You are required to plant [*number, species and size of tree/trees to be planted*] at the place(s) shown on the Schedule to this notice.

5. Time for compliance

[insert number] months from the date stated in paragraph 6 below

6. **When this notice takes effect**

This notice takes effect on [*specify date, which must be not less than 28 clear days after the date of service of copies*], unless an appeal is made against it beforehand.

7. **Your right of appeal**

You can appeal against this notice, but any appeal must be received, posted in time to be received, or sent electronically to be received, by the Welsh Ministers **before** that date specified in paragraph 6 of the Notice. You can appeal on any one or more of the following grounds:

1. That the provisions of the duty to replace trees or, as the case may be, the conditions of consent requiring the replacement of a tree/trees, are not applicable or have been complied with;
2. That in all the circumstances of the case the duty to replace trees should be dispensed with in relation to any tree or trees;
3. That the requirements of the notice are unreasonable in respect of the period within which the works are to be carried out or the size or species of trees specified in it;
4. That the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;
5. That the place on which the tree is or trees are required to be planted is unsuitable for that purpose.

You must also state the facts on which your appeal is based.

8. **Failure to comply**

If you do not comply with this notice, the Authority may enter the land, plant the

tree or trees and recover from you any reasonable expenses incurred. A person who obstructs someone exercising the Authority in exercising that power commits an offence, punishable by a fine of up to Level 3.

9. Advice

If you have any questions about this notice or would like some advice on how to comply with it, please contact [*name, email address, address and telephone number of appropriate Planning Authority officer*].

Dated this [*insert date of Notice*] day of [*insert month and year*]

[If the planning authority's standing orders require the sealing of such documents:]

The Common Seal of [*insert name of planning authority*] was affixed to this Notice in the presence of

.....]

[If the planning authority's standing orders do not require the sealing of such documents:]

[Signed on behalf of the [*insert name of planning authority*]

.....

Authorised by the Authority to sign in that behalf]

SCHEDULE

SPECIFICATION OF TREES TO BE PLANTED

MAP SHOWING LOCATION OF TREES TO BE PLANTED

How to respond

The closing date for responses is 15 February 2025, and you can respond in any of the following ways:

- **by email:** please complete the consultation response form and send it to: planconsultations-g@gov.wales.

Please include “Tree Regulations – WG50523” in the subject line of your email.

- **by post:** please complete the consultation response form and send it to:

Trees Regulations Consultation,
Planning Directorate,
Welsh Government,
Cathays Park,
Cardiff
CF10 3NQ.

UK General Data Protection Regulation (UK GDPR)

The Welsh Government will be data controller for Welsh Government consultations and for any personal data you provide as part of your response to the consultation.

Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. The lawful basis for processing information in this data collection exercise is our public task; that is, exercising our official authority

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to undertake the core role and functions of the Welsh Government. (Art 6(1)(e))

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. In the case of joint consultations this may also include other public authorities. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation and that the Welsh Government may be under a legal obligation to disclose some information.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

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- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the UK GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
Cardiff
CF10 3NQ
e-mail: dataprotectionofficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel: 0303 123 1113
Website: <https://ico.org.uk/>

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

- **by email:** planconsultations-g@gov.wales
- **by telephone:** Gemma Wheeler on 0300 025 6657

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