



Llywodraeth Cymru
Welsh Government

Number: WG50523

Welsh Government
Consultation – summary of responses

Preserving trees and woodlands: new regulations

February 2026

Mae'r ddogfen hon ar gael yn Gymraeg hefyd / This document is also available in Welsh
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg / We welcome correspondence and telephone calls in Welsh

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, those responsible are committing 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, accompanied by a new set of regulations – subject to approval by the Senedd.

A consultation paper was published in November 2024, explaining the changes that are proposed to be introduced in the new regulations, provisionally to be entitled the Planning (Wales) (Tree Preservation) Regulations, and invited stakeholders to express views on those changes.

This document summarises the responses received to that consultation paper.

Action Required

This document is for information only.

Further information and related documents

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

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Additional copies

This summary of response and copies of all the consultation paper are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation paper: [Preserving trees and woodlands: new regulations | GOV.WALES](#)

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1. Introduction

- 1.1. 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.
- 1.2. The Planning Act 2008 introduced a range of amendments to the Town and Country Planning Act 1990 (“TCPA 1990”), which created a simpler system of control, so that preservation orders will be simpler, whilst retaining the existing level of protection for trees and woodland. In future, 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.
- 1.3. The relevant provisions of the TCPA 1990, as amended by the 2008 Act, are being restated as Part 9 of the Planning (Wales) Bill (“the Bill”), currently before the Senedd.
- 1.4. On the date when Part 9 of the Bill comes into force (“the relevant day”), it will be accompanied by new regulations – provisionally to be entitled the Planning (Wales) (Tree Preservation) Regulations, and referred to in this document simply as “the Regulations”.
- 1.5. In line with a recommendation by the Law Commission in its 2019 report on [*Planning Law in Wales*](#), which was accepted by the Welsh Government, orders made after the relevant day to protect trees specified individually or as a group, or by reference to an area of land, will continue to be known as tree preservation orders (“TPOs”). But orders made to protect woodlands – which have always been treated by the law slightly differently – will in future be known as “woodland preservation orders” (“WPOs”).
- 1.6. The Planning Consequential Provisions (Wales) Bill (Sch.5, para.17) provides that an existing tree preservation order (made before the relevant day), insofar as it protects trees specified individually, as a group, or by reference to an area of land, will continue to be known as a TPO. Such an order will only have effect to identify the trees protected; all other details, previously in the order itself, will in future be in the Regulations.
- 1.7. Similarly, an existing tree preservation order, insofar as it protects woodlands, will in future be treated as being a WPO. Such an order will only have effect to identify the woodlands protected; again, all other details, previously in the order itself, will in future be in the Regulations.
- 1.8. Where appropriate, this document refers to both types of order simply as “preservation orders”. And it refers to a tree that is either subject to a TPO or in a woodland subject to a WPO simply as a “protected tree”.

2. The consultation exercise

- 2.1. We published a consultation paper [Preserving Trees and Woodlands: New Regulations](#) on 15 November 2024. It explained the changes that were expected to be introduced in the Regulations and invited stakeholders to express views on them. The consultation was open to responses for a period of three months, until 14 February 2025.
- 2.2. A total of 35 specific questions were asked. Sections 3 to 11 of this document summarise the responses and comments relating to each set of questions and indicates the Welsh Government's response.
- 2.3. Stakeholders, including organisations and individuals, were notified of the publication of the consultation paper in November 2024. This included all planning authorities (local authorities and national park authorities), other public bodies, special interest groups, businesses and consultants, and individuals. The consultation was made available on the Welsh Government's consultation website.
- 2.4. An online event for invited stakeholders took place on 11 December 2024, at which the proposals were explained; and there was an opportunity to ask questions. 76 people attended.
- 2.5. The consultation paper asked 32 specific questions as to matters that should be included in the Regulations. It also asked three questions as to the effect of making the Regulations on the Welsh language, and the approach to be used in calculating the costs of the changes. And it offered respondents an opportunity to raise any other related matters, in response to the final question.
- 2.6. In relation to most questions, respondents were invited to indicate "yes", or "yes (with comments)", or "no". Space was also provided in which they could make further comments, or to explain their response.

Respondents

- 2.7. The consultation generated 38 responses, and we are grateful to all those who took the time to respond. The breakdown of respondents was as follows:

Category	Number
Local authorities and national park authorities	9
Community councils	3
Other statutory bodies	1
Specialist tree-related bodies	4
Other professional bodies and interest groups	5
Voluntary bodies	3
Business / consultants	5
Individuals	8
Total	38

- 2.8. The planning authorities – local authorities and national park authorities – have the most experience of operating the existing system. Seven local authorities responded individually, and six authorities in north Wales submitted a joint response; as did two national park authorities. This means that responses were received from 15 (more than half) of the 25 planning authorities.
- 2.9. Many of the issues raised in the consultation are of a technical nature. A response was received from Natural Resources Wales (NRW), the statutory body that has the responsibility for administering the system of felling licences under the Forestry Act 1967. And the specialist tree-related bodies responding included the Association of Tree Officers, the Arboricultural Association, Coed Cadw (the Woodland Trust) and the Ancient Tree Forum. Between them, these responses provided a thorough examination of the proposals from the point of view of those with specialist knowledge and experience of working with trees and woodlands.
- 2.10. Other bodies and groups included those representing archaeologists, planners, ornithologists and farmers – all of whom have distinct interests in tree protection and works to trees. The businesses and consultants included foresters, a housing developer, a tree consultant, a landscape architect, and an architect.
- 2.11. A full list of respondents (and the categories to which they have been assigned) can be found in Annex A to this document.
- 2.12. Where respondents have asked for their details to be withheld, they appear simply as “Anonymous” under the appropriate category. And all those categorised as private individuals (including one who might have been employed by an organisation) appear anonymously, in order to comply with the General Data Protection Regulations. The responses of those in these two groups have been taken fully into account.

Responses: overall summary

- 2.13. As might be expected, the responses indicated a wide range of overall approaches. At one extreme, a few respondents (generally individuals) considered that all trees should be protected, and that it is wrong to offer legal protection only to those specifically identified as being of amenity value. Others (again, generally individuals) considered that all tree owners should be able to plant trees, and remove them or carry out works to them, without any restrictions.
- 2.14. But most accepted that the existing system, which has been in place in more or less its present form since 1943, operates broadly satisfactorily – providing a measure of protection for more significant trees and woodlands, whilst avoiding the administrative burden that would result from requiring consent for all tree works.
- 2.15. As to the more specific points made, many related to issues that would be more appropriately included in guidance, rather than legislation. These will be borne in mind when we prepare the guidance that will be issued to accompany the new Regulations.
- 2.16. Some responses to one question related more closely to a different question, or to an issue that was not the subject of a question and have been noted accordingly.
- 2.17. In the statistical analysis of the responses to each question, the responses have in a few cases been re-allocated in line with the supporting comment. And some responses were not clearly either favourable or otherwise. In some cases, a respondent did not explicitly agree or disagree with the proposition but simply made a comment. In a few cases, comments have been re-allocated to the question to which they more directly relate.
- 2.18. In a few cases, a respondent has raised the same issue in answer to a number of questions; we have not always referred to the issue in relation to each question, but we have noted the strength of feeling that lies behind the repetition.
- 2.19. A small number of respondents simply disagreed with a proposal (in one or two cases almost every proposal) without necessarily giving any explanation.
- 2.20. For these and other reasons, the precise arithmetical breakdown of responses should be treated with caution. But the overall position is clear.
- 2.21. Subject to the above, we have read carefully all of the responses to each question. In the following chapters of this document, we have not included or referred to every response; but we have attempted to summarise the principal issues raised.

3. Recurring themes

- 3.1. Sections 4 to 12 of this document summarise the responses relating to each general topic, indicating the principal issues raised in the replies to each question. Some themes recur in the replies given to a number of the questions; to avoid repetition, we highlight them here.
- 3.2. Firstly, several respondents suggested that there should be a much greater explicit recognition of ancient and veteran trees. And special considerations should apply when authorities are dealing with applications (including planning applications) for works affecting them.
- 3.3. *Government response:* Hopefully the widening of the criteria that justify the making of a preservation order will encourage authorities to make orders to protect such trees. The rules – as to the making of orders, the need for consent, and the procedure for making and determining applications – will then apply as in other cases. But in making decisions as to whether consent should be granted, and subject to what conditions, authorities and inspectors will have to take into account all relevant considerations, which will clearly include the age, rarity etc of the trees concerned. And the particular significance of ancient and veteran trees will be emphasised in guidance.
- 3.4. Secondly, a number of respondents drew attention to the need to ensure that those carrying out works to trees comply with other legislation – notably as to the protection of other plants, birds, and animals, and archaeology.
- 3.5. *Government response:* It needs to be appreciated that consent under the Trees Regulations does not avoid the need for obtaining authorisation under any other statutory code. But this too will be emphasised in the guidance that will be issued to accompany the Regulations.
- 3.6. Thirdly, some respondents alleged that there are examples of rules being broken, and concessions being abused; others emphasised the need for the whole system to be properly resourced. And some stressed the desirability of ensuring consistent practice across Wales.
- 3.7. *Government response:* We note these concerns, which apply to any system of control. We will be producing guidance to ensure that they are minimised as far as possible.

4. Factors that are to be taken into account in considering whether to make a preservation order

- 4.1. In considering whether to make a preservation order, a planning authority must decide whether to do so would be appropriate in the interests of amenity. The same applies where the Welsh Ministers are considering whether to make an order.

- 4.2. “Amenity” is a general term, and the Law Commission recommended that the Regulations should prescribe those matters that should be taken into account in making such a decision. The first question accordingly outlined a range of issues that might be taken into account when considering whether to make an order – and therefore, by implication, in making decisions as to the trees that have been protected. Not all will be relevant in every case.

Q1	Do you agree with the lists of matters to be taken into account in paragraphs 6.5 and 6.6 of the consultation paper when making a tree preservation order or a woodland preservation order in the interests of amenity?
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- 4.3. This question provoked a greater response than any of the others.
- 4.4. 34 out of the 38 respondents replied. Many welcomed the principle of widening of the criteria justifying the making of an order, to include explicitly factors other than simply visual amenity. 31 agreed with the proposed lists of matters to be taken into account, and more than half made supplementary comments.
- 4.5. A recurring theme was the need for clear guidance as to how the various attributes of trees and woodlands should be measured, to avoid subjective judgements. Several respondents referred to the TEMPO system (*Tree Evaluation Method for Preservation Orders*); although this would need to be updated to reflect the new criteria.
- 4.6. Amongst the specific comments on the proposed criteria were the following:
- *Age and rarity*: this would lead to more ancient and veteran trees being protected; but it should not mean that older trees would necessarily have priority over younger ones. Rarity needs to be considered in context; and age in relation to genus and species. And it might be relevant to consider the age of the woodland in question, as well as that of the trees within it.
 - *Appearance*: a list of factors to consider would be helpful, along with a clear explanation as to the significance of public visibility.
 - *Contribution to biodiversity*: this too needs clear definition, to include more than just the presence of protected species.
 - *Historic, scientific and recreational value*: “Cultural and heritage” value might be a better term than “historic” value; and “environmental” better than “scientific”. Some trees are of greater value in lessening pollution or combatting climate change. Some are of medicinal value.
- 4.7. Other factors that might be appropriate for inclusion in the list would be the societal and community value of a tree. And consideration should be given to how to assess a newly planted tree.

- 4.8. The widening of the criteria for making an order might lead to greater pressure to make new orders, and authorities need to be adequately resourced.
- 4.9. Of the four who disagreed, one suggested that criteria for making orders might be more appropriate within guidance than in regulations. One considered that “amenity” should always involve public benefit, which would normally imply accessibility or visibility. And one disagreed on the basis that consent should be required for works to any tree other than in a domestic garden.

Government response: question 1

- 4.10. We welcome the thoughtful responses to this question, and the many supportive comments. There seems to be overwhelming support for the general approach proposed; and we will consider carefully the terms to be used in the Regulations. We will also be issuing guidance at the same time as regulations, and we accept that it may be appropriate to include there some of the more detailed points made.

5. Making, varying and revoking preservation orders

- 5.1. The first two questions under this heading related to the two sample orders included as Annexes 3 and 4 to the consultation paper. The third related to the procedure for making orders.

Q2	Do you agree with the sample tree preservation order in Annex 3 to the consultation paper? Do you have any suggestions for improvements?
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- 5.2. A total of 32 respondents answered this question; 29 agreed (in around 50% of cases, subject to comments).
- 5.3. Several noted that the order should refer to a prohibition against “intentional” or “reckless” (rather than “wilful”) damage or destruction. Some suggested that article 3 should refer to the trees being protected by reference to the map accompanying the order, as well as by reference to the schedule. And some asked whether orders would need to be produced in both English and Welsh.
- 5.4. Some respondents highlighted matters that could be in the order itself but might be better included in a guidance leaflet accompanying the order – for example, clarifying the meaning of “lopping and topping”, and highlighting that carrying out of unauthorised works is a criminal offence.
- 5.5. One respondent highlighted the need for caution in the use of orders protecting trees specified as a group or by reference to an area.

Q3	Do you agree with the sample woodland preservation order in Annex 4 to the consultation paper? Do you have any suggestions for improvements?
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- 5.6. A total of 28 respondents answered this question; 24 agreed (in 37% of cases, subject to comments).
- 5.7. This question referred to “woodland preservation orders”, which will be a new concept. Here too, an indication of what is likely to be considered a “woodland” (rather than a precise definition) could usefully be included in a guidance leaflet to accompany new orders. Concern was raised by some as to whether this would lead to additional work. Others welcomed the distinction between tree and woodland preservation orders.
- 5.8. Some raised the issues referred to in paragraph 5.3 above.

Government response: questions 2 and 3

- 5.9. We welcome the general support for the sample orders and will take on board the detailed points raised – either in the drafting of the model orders that will be included in the Regulations, or in the accompanying guidance. In particular, guidance will explain the difference between TPOs and WPOs; and will mention wood pasture and parkland.
- 5.10. Guidance will also emphasise that, although it is good practice to update orders from time to time to accommodate changing circumstances, existing orders do not need to be re-made; they will automatically take effect as TPOs or WPOs as appropriate.

Q4	Do you agree with the proposed procedure for making tree and woodland preservation orders? Do you have any suggestions for improvements?
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- 5.11. This question emphasised that the procedure for making an order would be broadly as at present, subject to one or two minor changes. A total of 32 respondents answered this question; 28 agreed (in 50% of cases, subject to comments).
- 5.12. There was general agreement to the procedure, subject in some cases to comments made in respect of Questions 2 and 3. The planning authorities, in particular, raised few comments, except as to who should be notified of the making of an order (a point also mentioned by others).
- 5.13. The specialist tree-related bodies were generally supportive as to the procedure, save that one suggested that the procedures for making an order should be in guidance rather than in regulations. But they raised major objections to the proposal that orders specifying trees by reference to an area, on being confirmed, should always be modified so as to specify the trees individually or as groups.

5.14. A few respondents queried the six-month period for confirming order, in view of the limited resources available to authorities. One suggested that an order should state the matters that were taken into account in proposing it (beyond simply stating “in the interests of amenity”).

5.15. One respondent urged that TPOs should be regularly reviewed.

Government response: question 4

5.16. The Government is grateful for the comments received, and notes that there is general support for continuing the order-making procedure broadly as at present.

5.17. The guidance accompanying the Regulations will emphasise good practice – notably as to who should be consulted, and how representations should be dealt with. The proposed six-month period for confirmation is the same as at present, but this will be kept under review. And the desirability of reviewing orders will be emphasised.

5.18. The use of area orders – both as an emergency measure and on a continuing basis – will be monitored in the light of the helpful comments made.

6. Activities that may be prohibited by a preservation order

6.1. The Bill provides that regulations may prohibit the carrying out of a range of activities without consent, subject to a number of exceptions.

Q5	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 of the consultation paper? Do you have any suggestions for improvements?
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6.2. We proposed that an order should generally prohibit cutting down, topping, lopping or uprooting a protected tree, intentionally or recklessly damaging or destroying it, and causing or permitting any of those operations.

6.3. 34 respondents answered this question; 30 agreed (18 without comment, 12 subject to comments).

6.4. Several agreed with the works proposed but suggested that the prohibited works should include root cutting and damage to the rooting environment – including drainage and level changes. One suggested that the Regulations should refer to all or part of a tree.

6.5. A number of respondents questioned the continuing use of the term “topping or lopping”. Some pointed to confusion between “lopping” and “pruning”. One questioned whether “topping” should be discouraged, as it would change the growth form of a young tree.

6.6. A few noted that some types of work had a much greater impact than others. And one considered that coppicing and pollarding should always be allowed.

Government response: question 5

- 6.7. We note that the general response was favourable; and in particular that the change from “wilful” to “intentional or reckless” has been welcomed.
- 6.8. We agree that the terms “topping” and “lopping” are now somewhat dated, but they together include any alteration to a tree – either a vertical or horizontal limb. This will be clarified in guidance. But we will consider whether “lopping” should be defined in the Regulations so as to include explicitly the lopping of either branches or roots, and how “pruning” should be dealt with.
- 6.9. Guidance will also make it clear that consent is required for a wide range of works (subject to the specified exceptions; see below); but this does not mean that it will always be granted or always refused; each proposal will be assessed on its merits, in the light of its probable impact.

Q6	Do you agree with the proposed exceptions relating to the removal of dead branches (Class A)? Do you have any suggestions for improvements?
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- 6.10. This question provoked more of an adverse response than any other. Of the 33 who responded, 17 agreed without comment, 9 agreed subject to comment, and seven disagreed. However, this analysis is misleading, as many of those “agreeing” with the proposed exception went on to criticise it in their detailed comments.
- 6.11. One respondent strongly agreed, stating that the timely removal of dead branches is essential.
- 6.12. But the others who commented, and those who objected (in some cases strongly), all made broadly the same points:
- dead branches that are causing a danger can be removed without consent, in reliance on Class B; so, this Class (Class A) would only be needed to allow the removal of branches that are not dangerous;
 - dead branches may provide a good habitat for other organisms, and their removal could harm biodiversity;
 - it is not good practice to remove dead branches as part of routine tree maintenance, except where they are dangerous;
 - this class is less appropriate in light of the expanded criteria justifying the making of a TPO or WPO, to include biodiversity and habitat value;
 - very minor works might be justified on the basis that “lopping” does not include “pruning”; and
 - it is not always possible to determine the boundary between dead wood and living wood.

Government response: question 6

- 6.13. The Government notes the high level of concern that has been raised – which to some extent may reflect the changing climate of opinion in recent years, and the increased awareness of the value of dead branches as a habitat for wildlife and other plants. It will carefully consider whether this Class is needed in addition to Class B.

Q7	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?
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- 6.14. This exception is to replace the existing provision whereby works may be carried out without consent to trees that “are dying or dead or have become dangerous”. There would be no exception purely on the basis that the tree in question is dying or dead – and the “dangerous” element of the exception is to be tightened up.
- 6.15. There was general support for this proposal. Of the 31 respondents who answered the question, 27 were in favour; and 11 of those commented.
- 6.16. NRW pointed out that this exception is in similar terms to the corresponding exception from the need for a felling licence under the Forestry Act 1967. And the Archaeological Officers highlighted the problem where works affect a scheduled monument.
- 6.17. Some respondents, in response to this question and those that follow as to other exceptions, highlighted the need for caution to avoid harm to protected species (notably birds).

Government response: question 7

- 6.18. The Government is grateful for the general support for this proposal. It will consider carefully the comments raised, some of which may be suitable for inclusion in guidance – for example, as to the procedure for notifying works in this category, and the need to avoid harm to protected species.

Q8	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?
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- 6.19. 32 respondents replied; 29 agreed, of whom nine made comments.
- 6.20. Some drew attention to the need to comply with other legislation (as to protected species and archaeology); and some pointed out the danger of such an exception being relied upon inappropriately. One or two suggested that the planning authority should be notified of such works. And some suggested that this Class should not apply to works to veteran and ancient trees.

Q9	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?
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- 6.21. 31 respondents replied to this question; 26 agreed, of whom 15 made comments.
- 6.22. Some respondents made points as for the previous Class (see paragraph 6.20 above). Some drew attention to uncertainty as to what is “operational land”.

Government response: questions 8 and 9

- 6.23. We are grateful for the feedback. These two exceptions both exist at present, and no changes are proposed. But guidance will be needed to ensure that the Classes are not abused; if they are, we will consider whether such works need to be notified (except in an emergency). We will also clarify in guidance which bodies are treated as “statutory undertakers” for the purpose of this exception, and what is operational land.

Q10	Do you agree with the proposed exceptions relating to works necessary to implement a planning permission (Class E(1))?
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- 6.24. 34 respondents answered. 28 agreed, of whom more than half made comments.
- 6.25. A number of respondents drew attention to the need to clarify that this does not extend to works to carry out development authorised by an outline permission or by the General Permitted Development Order (“permitted development”). Some suggested that it should not apply in the case of ancient or veteran trees.
- 6.26. Some highlighted the importance of planning authorities considering trees when assessing proposed development. One highlighted the practice whereby an applicant for planning permission states that no trees will be affected by a proposed development, so that the authority does not inspect the trees on site; but when the development is carried out, trees are removed without consent.

Government response: question 10

- 6.27. We are grateful for the feedback. This class exists at present, and does not apply in the case of works needed to carry out development authorised by an outline permission or permitted development; but that will be made clear in guidance. And authorities will need to be reminded of the importance of taking into account trees and woodlands (either those protected by orders or any others) when assessing proposed development – and ensuring that tree-related conditions are enforced.

Q11	Do you agree with the proposed exceptions relating to works necessary to implement an authorisation under the Opencast Coal Act 1958 (Class E(2))?
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Q12	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?
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6.28. One particular type of development that may require the removal of protected trees is opencast coal mining. Proposed Class E(2) restates the provision, currently in section 198(7)(a) of the TCPA 1990, which relates to the removal of trees necessary to implement opencast coal operations that have been authorised under the Opencast Coal Act 1958.

6.29. 26 respondents replied to question 11. Almost all agreed and made no comment.

6.30. We are aware that no such authorisation has been issued for almost thirty years, so we also asked whether any respondents had experience of this provision. No one did.

Government response: questions 11 and 12

6.31. We are grateful for the responses, which confirm that this exception is rarely if ever relied on in practice. It is likely that it will be retained, at least for the present; but it may be brought to an end in due course.

Q13	Do you agree with the proposed exception relating to works to fruit trees (Class F)?
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6.32. 31 Respondents answered this question; 28 agreed, 9 subject to comments. 3 disagreed, including two planning authorities.

6.33. One of those disagreeing, and several of those agreeing in principle, drew attention to the ecological value of old orchards, which might contain rare varieties, and of some individual fruit trees.

6.34. Some expressed uncertainty as to what might be included within the scope of “pruning in accordance with good horticultural practice”.

Q14	Do you consider that the Regulations should define “fruit tree” so as to include “nut tree”?
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6.35. This question provoked more comments than many others. 30 respondents replied; 25 indicated that they should, but 10 of those were subject to comments.

6.36. One respondent pointed out that there is, of course, no botanical basis for any distinction – a nut is a type of fruit. Many of the responses pointed to the fact that “nut trees” include a number of large trees, such as sweet chestnut and oak; a general exception for nut trees would therefore be inappropriate.

Others suggested that an exception might be justifiable for nut trees grown for commercial purposes to produce edible nuts.

Government response: questions 13 and 14

- 6.37. The exception relating to fruit trees exists at present; and we were proposing no change.
- 6.38. We are grateful for the many thoughtful responses to these two questions. We will consider whether guidance could clarify the meaning of the first exception (commercial fruit trees), and in what circumstances it might include nut trees.
- 6.39. We note the problems arising in connection with the second exception (pruning other fruit trees), not least in the light of uncertainty as to status of “pruning”, and as to the position with regard to larger trees that could be said to be nut trees, and will carefully consider the best way forward.

Q15

Do you agree with the proposed exception relating to forestry operations as set out in paragraph 9.32 of the consultation paper (Class G)?

- 6.40. This exception would include in the Regulations the exceptions currently found in section 200 of TCPA 1990, which effectively avoid the need for consent to be obtained for works to protected trees that are to be carried out by the Forestry Commission or by NRW, or works that have been approved by them.
- 6.41. 28 respondents replied to this question, of whom 24 agreed, in six cases subject to comments. All planning authorities and community councils were in favour, without comment.
- 6.42. NRW, as the body principally responsible for carrying out and approving such works in Wales, pointed out that forestry is carried out in accordance with the UK Forest Standard, which includes all the matters relevant to the making of TPOs and WPOs (see section 4 above). It therefore considers that the exception is appropriate. The Ancient Tree Forum agreed.
- 6.43. Other respondents drew attention to the need to protect ancient, veteran and other important trees that may be affected by forestry operations, although some accepted that this would not often arise in practice.

Government response: question 15

- 6.44. We are grateful for the generally supportive response; although we note the concern as to forestry works affecting specific trees of particular value. We will consider whether this should be the subject of guidance.

7. Trees in a conservation area

- 7.1. The previous questions related to the need for consent to be obtained for works to a tree protected by a TPO or a WPO. Related to this is the issue of

the extent of the requirement to notify the planning authority of works to a non-protected tree in a conservation area.

Q16	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?
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- 7.2. We indicated that we were proposing to retain all of the existing exceptions, broadly as set out above in relation to Classes A to F.
- 7.3. 29 respondents replied to this question, of whom 23 agreed.
- 7.4. Of those who disagreed, one was only concerned as to the size limitation – see under the following question. Two respondents considered that all trees in conservation areas should automatically have the same level of protection as those protected by a TPO.
- 7.5. Several respondents raised issues that they had also raised in connection with exceptions from the need for TPO consent – particularly Classes A and B. These have been noted above.
- 7.6. Points specific to unprotected trees in conservation areas included the need to publicise works by planning authorities to their own trees. Two respondents suggested that the exception relating to works to small trees would assist in managing heritage assets in conservation areas.

Q17	Do you consider that the exception relating to works to small trees in conservation areas is appropriate?
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- 7.7. 31 respondents replied to this question. 25 agreed with the present sizes, with five cases subject to comments. One respondent noted that small trees could grow into high amenity mature trees; and the appropriate limit might vary as between different species; but lowering the size limits (or abolishing the exception altogether) would result in more work for authorities. Two suggested a single size applicable in all cases (rather than, as at present, differentiating multi-stemmed trees) might be preferable – possibly 100mm.

Government response: questions 16 and 17

- 7.8. We are grateful for the responses, which indicate that the present exceptions seem to be generally acceptable. Any changes made to the exceptions from the need for consent for works to TPO trees as noted in section 6 above are likely to apply to non-TPO trees in conservation areas.

8. Applications for consent for prohibited activities

- 8.1. Questions 18 to 23 relate to the procedure for obtaining consent for works to protected trees. We are generally proposing to retain the existing procedures but were interested to know if there are any respects in which they could be adjusted so as to operate more satisfactorily.

Q18	Do you consider that the current consent procedures under the 1999 Regulations operate satisfactorily? Do you have any suggestions for improvements?
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- 8.2. 28 respondents replied to this question. 24 agreed that the current procedures are satisfactory, with only three very minor comments.
- 8.3. One respondent indicated that it would be desirable for applicants to have to supply information as to biodiversity and protected species. And one suggested that it would be helpful to make explicit provision for “split decisions” (where, for example, consent is sought to fell two protected trees but only granted for one).

Q19	Do you consider that the list of types of conditions that may be imposed on a consent are appropriate?
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- 8.4. 30 respondents replied to this question; 29 agreed (in some cases subject to comments). The one who disagreed was concerned as to the 3:1 replacement planting ratio specified in PPW.
- 8.5. Respondents generally agreed with categories of conditions suggested. Some provided detailed comments – for example, in relation to standards of works, replacement planting, archaeology. Several implied concern that not all of the suggested conditions would be suitable on every occasion.

Government response: questions 18 and 19

- 8.6. We welcome the responses to these questions, which indicate general support for the existing procedural arrangements. We will consider whether there need to be specific provisions to allow for split decisions. We will take onboard the comments as to conditions, which will be useful when we produce the guidance to accompany the Regulations. We note the concern raised (in response to these and other questions) as to the replacement planting policies in PPW and will consider this carefully in producing guidance.

Q20	Do you agree that it is inappropriate to extend an existing preservation order to protect a new tree required to be planted and [that it would be preferable to make] a new protection order if appropriate?
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- 8.7. 32 respondents replied to this question, of whom 19 (over half) either disagreed (13) or agreed subject to comments (6).
- 8.8. A number of the responses stressed the importance of ensuring that replacement trees are planted; and that those trees are established and protected. Of those who addressed the specific question as to whether the old order should protect the new tree, opinions were divided; some emphasised the administrative problems that were perceived to arise; others considered that a new order would be more appropriate, particularly where two or more trees are planted to replace one tree.

Government response: question 20

- 8.9. We are grateful for the wide range of responses to this question. We are well aware of the importance of ensuring replacement planting in appropriate cases, and will consider carefully what is the most helpful way of ensuring that this is achieved as effectively as possible.

Q21	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?
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- 8.10. At present, consent for the felling of trees protected by an order as part of a woodland may be accompanied by a direction ordering replacement planting; in other cases, consent may be accompanied by a condition requiring replacement planting. We indicated that there seemed to be no need for the two different mechanisms, and asked whether respondents thought there was a need for them.

- 8.11. 28 respondents replied to this question. 15 of those (including all of the planning authorities, the other statutory bodies and the specialist tree-related bodies) agreed that there was no need for the two mechanisms.

- 8.12. Those answering “yes” generally gave no reasons; but there were no reasons given to support the retention of the two mechanisms; and those who did make comments all considered that the imposition of conditions was the more appropriate mechanism.

Government response: question 21

- 8.13. We are grateful for the responses, which have indicated general support for doing away with replanting directions.

Q22	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?
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- 8.14. 25 respondents replied to this question. All but one agreed that there should be a procedure governing such applications. Two emphasised the need the planning authority to be able to make an input into the process within a limited time period.

Government response: question 22

- 8.15. We are grateful for the responses; the Regulations will provide for an appropriate procedure, and we note the suggestion that there should be an automatic right for an authority to respond.

Q23	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?
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- 8.16. 26 respondents replied to this question. 21 indicated that the current procedure was operating satisfactorily (generally without any comment). Two emphasised that applications by authorities should be dealt with in such a way as to ensure no conflict of interest.

Government response: question 23

- 8.17. We are grateful for the responses, which indicate the procedure is generally operating satisfactorily.

9. Appeals and compensation

- 9.1. Where an applicant applies for consent, the result may be a refusal, or a grant of consent subject to onerous conditions, or simply no response at all. Any of these may lead to the submission of an appeal to the Welsh Ministers. And a decision (from the authority or the Welsh Ministers) that results in financial loss may result in a claim for compensation.

Q24

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

- 9.2. 25 respondents replied. Of those, 22 said that the present system was operating satisfactorily; although several emphasised the desirability of ensuring that tree appeals are determined by specialist inspectors with appropriate expertise.

Government response: question 24

- 9.3. We are grateful for the responses to this question, indicating broad support for the present system.

Q25

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?

- 9.4. 26 respondents replied to this question. 19 respondents indicated that the present system was satisfactory, although several indicated that they had little experience of it in practice.
- 9.5. Of those who disagreed three pointed out that the entitlement to compensation led to authorities granting consent for works to valuable trees that should be retained. This is a particular problem in cases involving building subsidence.

Q26	Do you consider that the transitional arrangements set out at paragraph 16.4 of the consultation paper represent a satisfactory way of dealing with cases where an article 5 certificate remains in force under a pre-1999 order? Are you aware of cases involving such certificates?
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- 9.6. Only 22 respondents replied to this question. We note that a number of respondents stated explicitly that they were not aware of any cases involving article 5 certificates.
- 9.7. Three respondents expressed support for article 5 directions in principle but made no comment as the transitional arrangements proposed for existing directions.

Government response: questions 25 and 26

- 9.8. We are grateful for the responses to these questions. The entitlement to compensation, and the inability to make new article 5 directions, may have the consequences outlined by some respondents, but they result in few claims in practice, possibly due to the tightening-up of the requirements as to submitting evidence as to loss allegedly caused by trees (see regulation 9B(1)(c)(iv) of the 1999 Regulations, inserted in 2012).
- 9.9. It has not been possible since 1999 for an authority to make an article 5 direction when making a decision on an application for consent. Question 26 therefore related solely to the continuing effect of directions made prior to that date. We note that there has been no disagreement as to the transitional arrangements suggested.

10. Replacement of trees

- 10.1. Following the removal of a tree that is protected by a TPO or a WPO or is in a conservation area, the law requires that in some cases a replacement must be planted.

Q27	Do you agree with the sample tree replacement notice in Annex 5 to the consultation paper? Do you have any suggestions for improvements?
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- 10.2. 26 respondents replied to this question. All but one agreed with the sample form proposed. Several made suggestions as to drafting changes that could be made to reflect the importance of establishing and maintaining the newly planted trees.

Q28	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?
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- 10.3. 32 respondents answered this question, of whom 27 agreed (subject to comments in some cases).

- 10.4. Several respondents made comments as to the circumstances in which a replacement should be required, and where it should be planted. They indicate that such a requirement is by no means always appropriate.

Q29	Do you consider that the present arrangements for handling tree replacement appeals operate satisfactorily? Do you have any suggestions for improvements?
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- 10.5. 23 respondents replied to this question: 20 agreed. Almost no comments were made.

Government response: questions 27 to 29

- 10.6. We are grateful for the responses to these questions. We will consider the points made with respect to the drafting of a tree replacement notice, and in particular as to whether they should best be dealt with in the draft notice itself (in the Regulations) or in the accompanying guidance.
- 10.7. The comments as to whether it is necessary to require a replacement tree to be planted will be considered carefully, particularly in producing the guidance to accompany the Regulations.
- 10.8. Otherwise, the procedures, including those relating to appeals, are likely to be retained broadly as existing.

11. Miscellaneous points

Q30	Do you agree that [registers] should contain details of notice of proposed works to trees in a conservation area as well as the details outlined in paragraph 18.3 of the consultation paper?
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Q31	Can you provide details on how registers are maintained in practice?
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- 11.1. 29 respondents replied to question 30. 26 agreed with the broad proposition, generally without comments.
- 11.2. One authority queried the need for a formal requirement to maintain a register, as they had received very few requests to inspect it.
- 11.3. Some detailed suggestions were made as to how registers could or should be maintained. Digital or other document-management systems could be used, possibly in association with the register of planning applications and decisions. Some suggested that the keeping of registers should be standardised, so that members of the public could easily identify if particular trees are protected.

Government response: questions 30 and 31

- 11.4. There must be a register of orders and applications, as owners and contractors might otherwise be unable to discover whether a tree is

protected, and might be liable to be prosecuted for works to it. The regulations will set out the general requirements as to what information should be included in the register.

- 11.5. The guidance accompanying the Regulations will set out best practice, which may change from time to time in the light of experience gained. The answers to these questions will be useful in assembling that guidance.

Q32	What, in your opinion, should be retained or replaced within the existing guidance (see Annex 2 of the consultation paper)?
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- 11.6. 24 respondents provided views in answer to this question.
- 11.7. There was general agreement that TAN 10 (*Tree Preservation Orders*, 1997) is out of date and too basic. A number of respondents suggested that it would be helpful to have a single source of guidance, to the standard of *Tree Preservation Orders: A Guide to the Law and Good Practice* (issued by the UK Government in 2000 and updated in 2009; also known as the “Blue Book”).
- 11.8. Suggested topics to be included in guidance (as well as those mentioned above in response to other questions) included: the criteria for making TPOs and WPOs, and methods of assessment; the definition of “woodland”, the significance of ancient and veteran trees; the assessment of biodiversity and habitat value; the need for replacement planting; the need to consider other consent regimes (notably wildlife and archaeology); and the impact of different types of tree works.

Government response: question 32

- 11.9. We are grateful for the responses to this question, which will be useful when we come to prepare the guidance to accompany the Regulations.

Q33	What, in your opinion, would be the likely effects of the Regulations on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English. Do you think that there are any opportunities to promote any positive effects? Do you think that there are any opportunities to mitigate any adverse effects?
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Q34	In your opinion, could the Regulations be formulated or adjusted so as to: <ul style="list-style-type: none"> (a) have positive effects (or more positive effects) on using the Welsh language, and on not treating the Welsh language less favourably than English? or (b) mitigate any negative effects on using the Welsh language, and on not treating the Welsh language less favourably than English?
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- 11.10. 13 respondents answered question 33 and 11 respondents answered question 34.

- 11.11. Few identified any likely negative effects on the use of the Welsh language.
- 11.12. Several respondents observed that the publication of the Regulations in both languages would be an opportunity to provide all documentation (orders, TRNs, etc) in Welsh as well as English, where this is not being done already. It would also be a chance to produce new guidance in both languages, increasing knowledge of Welsh woodland terminology, common native tree species, etc.
- 11.13. And a number emphasised the desirability of planning authorities being able to provide a truly bilingual service.

Government response: questions 33 and 34

- 11.14. The regulations (including the sample forms and notices) will be produced in both languages; as will the accompanying guidance.

Q35	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.
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- 11.15. Few respondents answered this question. Of the 14 who did, 12 agreed with the proposed approach.
- 11.16. One noted that the tree function within the planning service generates no direct income, which might be why it tends to be reactive (responding to applications) rather than proactive (for example, updating old orders).

Government response: question 35

- 11.17. These responses will inform the regulatory impact assessment that will accompany the regulations.

12. Supplementary points not covered in the previous questions

- 12.1. The final question invited respondents to make any points that they had not raised in response to the earlier questions.
- 12.2. Some took the opportunity to welcome the proposals generally.
- 12.3. Others made comments in relation to specific topics; we have summarised them below in relation to each topic. We have also included here one or two points raised in response to other questions.

Q36	We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them
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Works to prevent or abate a nuisance

- 12.4. We noted in the Consultation Paper that we were proposing not to include the existing exception relating to “works necessary to prevent or abate a nuisance”. But there was no specific question as to this, as our proposal arose as the result of a recommendation by the Law Commission in its report on *Planning Law in Wales*, which had been the subject of a consultation exercise (in which it was overwhelmingly supported).
- 12.5. However, several respondents to the present consultation exercise mentioned this exception in their replies to this question or to other questions.
- 12.6. The omission of this exception was supported by the Arboricultural Association, Coed Cadw, and the Ancient Tree Forum.
- 12.7. One respondent emphasised that the planning authority or the planning inspector must be responsible for damage arising from the tree; this is achieved through the availability of compensation.
- 12.8. One respondent emphasised very strongly that the exception should be retained.
- 12.9. On a related point, one respondent suggested that guidance should emphasise that trees are not dangerous merely because they are overhanging another property.

Unauthorised works

- 12.10. One respondent asked whether it would be possible to have a system similar to “stop notices”, to enable authorities to prevent impending works to trees.
- 12.11. And one supported the suggestion that was made by the Law Commission for the rationalisation of tree work offences.

Works to trees in a conservation area

- 12.12. One respondent suggested that all trees in a conservation area worthy of protection by a TPO should have been identified by now and asked whether there was any continuing need to notify all works to non-protected trees in conservation areas. The burden should be placed on planning authorities to consider trees when reviewing boundaries of conservation areas.
- 12.13. It was suggested that the system of notifying works to trees in a conservation area that are not protected by an order is very unsatisfactory.
- 12.14. One respondent suggested that works by a planning authority to its own trees in a conservation area should be publicised – as with works to a TPO tree.

Trees in registered parks and gardens

- 12.15. Several respondents mentioned the importance of trees in registered parks and gardens, and the contribution made by trees towards their special character.

Highway trees

- 12.16. One suggested that planning authority trees (including on highways) of amenity value should be subject to TPOs

General points

- 12.17. Several respondents urged that TPOs should be regularly reviewed. And guidance should encourage consistent good practice across Wales.

Government response

- 12.18. We welcome the various points raised and will take them into account when finalising the Regulations and the accompanying guidance.
- 12.19. Where they cannot be acted upon at present, they will be retained for possible inclusion at a future date.

Annex A – List of respondents by category

Planning authorities

North Wales Tree and landscape officer group - Conwy CBC, Denbighshire CC, Flintshire CC, Gwynedd Council, Wrexham CBC, Ynys Mon CC)

Cardiff Council

Ceredigion CC

Monmouthshire CC

Pembrokeshire CC

Rhondda Cynon Taf CBC

Swansea Council

Torfaen CBC

Pembrokeshire Coast and Brecon Beacons National Park Authorities

Community councils

Chepstow

Llangollen

One council that wished to remain anonymous

Statutory bodies

Natural Resources Wales (NRW)

Specialist tree-related bodies

Association of Tree Officers

Arboricultural Association

Coed Cadw (Woodland Trust)

Ancient Tree Forum

Other professional bodies and interest groups

Association of Local Government Archaeological Officers Cymru

RTPI Cymru

RSPB Cymru

NFU Cymru

Farmers' Union Wales

Voluntary bodies

Friends of the Earth Pontypridd

Two bodies that wished to remain anonymous

Businesses, consultants

Barratt Redrow Homes

Julian Morris Tree Services

Andrew Sumner (landscape architect)

Two organisations that wished to remain anonymous

Individuals

Eight individuals