



The Protection of Trees and Woodlands in Wales

AIDAC

Asesydd Interim Diogelu'r Amgylchedd Cymru

IEPAW

Interim Environmental Protection Assessor, Wales

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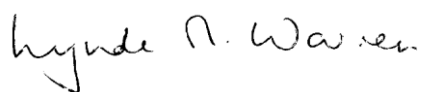
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Foreword

The IEPAW is greatly encouraged by recent policy initiatives in Welsh Government which place strong emphasis on the value of trees and woodlands in Wales for environmental, social and economic reasons. The amendments introduced by the Agriculture (Wales) Act 2023 address some of the concerns raised with us about felling licences. The same applies to the reforms to Tree Preservation Orders included in the draft Planning (Wales) Bill. The latest edition of Planning Policy Wales embeds the environmental importance of trees into policy and includes some strong requirements for local planning authorities to follow. We look forward to seeing how these new policies will be applied in practice. Much will depend on the way they are communicated. The current legal regimes for tree felling, TPOs and planning consent are not always easy to follow and there can be confusion as to which apply and when.

We have made recommendations which we hope will be helpful to the Welsh Government and others in their efforts to implement the policy on trees and woodlands and will encourage them to consider how best to address the gaps that remain such as the lack of specific protection for trees recognised as being of particular importance.

This report is the culmination of more than four years work. Most of the evidence gathering and initial analysis was done when Nerys Llewelyn Jones was the Interim Environmental Protection Assessor for Wales. For much of this time she worked on her own. Anna Heslop and I joined her as deputies in May 2024. In March 2025 we were joined by John Henderson when I took over Nerys's role. I am very grateful to Anna and John for their wise advice on the content of the report. The main credit, however, is down to Nerys. Without her understanding of the law and determination to make recommendations for change, there would have been no report. Any errors, however, rest with me.



Interim Environmental Protection Assessor for Wales

Role of the Interim Environmental Protection Assessor for Wales (IEPAW)

The IEPAW provides members of the public with an independent mechanism to raise submissions about the functioning of environmental law in Wales. The IEPAW advises the Welsh Ministers if the submissions raised fall within the remit of the IEPAW and makes recommendations for any action they consider may need to be taken.

The interim measures are non-statutory, and their main purpose is to:

- provide oversight of the functioning of environmental law in Wales; and
- consider systematic issues relating to the working/functioning of environmental law in Wales.

The functioning of environmental law may mean considering whether:

- the law is fit for purpose or still relevant.
- the information or explanatory material on the law is accessible, clear and certain; or
- the practical implementation of the law is effective.

The scope of the interim measures does not cover:

- breaches in environmental law.
- areas of non-compliance with environmental law; and
- issues raised that are covered by another complaint's mechanism or process.

The IEPAW's aim is to identify where action may need to be taken to correct functioning issues that will improve environmental outcomes. Its strategic objectives are to:

- provide a service to the public that allows them to make submissions to the IEPAW.
- advise the Welsh Ministers on any action that may be required; and
- contribute to the development of the permanent approach to environmental governance in Wales.

Executive Summary

This report on the legal protection of trees and woodlands in Wales was written in response to submissions questioning whether the law relating to tree felling, Tree Preservation Orders (TPOs) and the planning system adequately addresses the value of trees and woodlands in Wales.

Despite the rural nature of Wales, it is one of the least wooded countries in Europe with woodland covering only 15 per cent of the land area compared to an average of 38 per cent in the EU. Of the 313,000 ha of woodland, just under half are softwood. Two thirds of this conifer woodland is within the Welsh Government Woodland Estate. It is estimated that there are an additional 92,700 ha of tree cover outside of defined woodlands more than half of which is made up of trees in orchards, parks, wood pastures and urban areas.

Definitions

It was suggested to us that there was some confusion over the definition of the terms tree, woodland and forest because the different legal regimes apply slightly different definitions. The IEPAW did not consider there would be any benefit in putting definitions on a statutory footing but did agree that, as there can be an overlap between the operation of the legal regimes, it is important that definitions used are not contradictory.

Felling Licences

The evidence we received from stakeholders suggests that the felling licence application process is generally accepted and well understood. The fact that the felling licence might not be the only authorisation required was not so clear, however. Some people did not realise that there might be a need to apply for other authorisations; others questioned the need to do so.

The licence exemptions provided for under the Forestry Act 1967 are overly complex, however, and allow a significant amount of tree felling to occur without the need to apply for a licence.

It is not clear how much felling occurs in practice. There are concerns that landowners may be going beyond the amount they can fell under exemptions or under the terms of their licence(s). Without a way of accurately monitoring the amount of felling that is occurring in practice, it is impossible for the regulator to properly assess whether the current licensing arrangements are fit for purpose and whether they are effectively protecting our trees and woodlands.

At present, felling activity is measured by volume. This approach does not consider the carbon sequestration capacity of trees where mature trees are able to capture greater volumes of carbon. There are significant incidents of alleged illegal felling in Wales.

The IEPAW strongly endorses the measures and associated guidance that NRW has developed in respect of environmental conditions attached to felling licences. There are three tiers of conditions. Baseline conditions in line with the UK Forestry Standard are automatically applied to all felling licences. Tier Two conditions may be attached to a licence where there is a potential to impact on sensitive areas and/or protected species. Bespoke conditions may be included where there are multiple sensitive areas on a site.

We are concerned, however, that failure to comply with a licence condition is not an offence. If an environmental condition is not complied with, NRW's only course of action is to serve a notice amending, suspending or revoking the licence. We agree with NRW that this may not be a sufficient remedy, for example, where the condition was to retain something which has been felled or disturbed. By this time, the environmental harm has already occurred with no potential to prosecute or otherwise penalise the landowner or operator.

We agree with NRW that the legislation on restocking notices in Wales should be brought in line with that applying in England where the court is able to make a restocking order following conviction for the offence of failing to comply with an

enforcement notice requiring compliance with a licence condition to restock. There have been significant illegal felling prosecutions in Wales where land has not been restocked following non-compliance with an enforcement notice.

The management of ancient woodlands may require some trees to be felled, for example for thinning purposes. We agree with Coed Cadw, however that there should be a presumption against giving felling consent for veteran and large mature trees in these woods.

It is important that NRW is adequately resourced to carry out its licensing functions so there is value in considering the introduction of a charging mechanism to offset the costs associated with increased processing and granting applications for felling licences. The introduction of any such scheme would need to be balanced against the need to ensure that landowners are not unduly dis-incentivised from applying for a licence. The IEPAW believes the advantages of a charging mechanism would outweigh any potential disadvantages.

The IEPAW does not think that the importance of trees to Wales is sufficiently reflected in the penalties available for offences. For example, the characteristics of each tree illegally felled should be considered in determining fines. We also agree that the option of imposing civil sanctions could be a more efficient, cost-effective enforcement mechanism.

Tree Preservation Orders (TPOs)

The proposed Planning (Wales) Bill, currently in draft form, will include provisions to replace much of the current law on TPOs with provisions in the Planning Act 2008. We welcome these changes which will make considerable improvements to the law relating to TPOs in Wales and address several of the concerns raised in the evidence given to us. In particular, it will widen the definition of amenity and restrict the exception to the requirement to obtain consent before cutting down or cutting back a tree that is dead, dying or dangerous. The inclusion of a model order should also help to ensure

consistency between local authorities across Wales and make TPOs easier to understand. It will be important, however, to update both TAN 10 and *Protected Trees: a Guide to Tree Preservation Procedures* to take account of the new procedures and to include references to the duties to maintain and enhance biodiversity as set out in the Environment (Wales) Act s. 6.

We have concluded that TPOs are under-used at the moment possibly because of lack of capacity within local authorities. We think there should be a proactive approach to making TPOs so that important trees are identified and given protection rather than waiting for them to come under threat. We believe that there should be dedicated Tree Officers in each local authority who have the skill necessary for identifying trees needing protection, advising on appropriate works to be carried out on them and advising on replanting where this is required. It may not be possible to appoint qualified arboriculture experts as Tree Officers in every local authority, but it will be important for each of them to have access to specialists with this expertise.

There are concerns that the level of fines imposed by the courts are too low for the fear of prosecution to act as a deterrent. The low level of fines may be because trees have been assessed on their visual amenity value only. It is to be hoped that the introduction of the wider definition of amenity and the enhanced appreciation of the wider environmental impact of unlawful felling of protected trees will lead to higher fines in the future.

At present the information available on TPOs varies considerably between local authorities in Wales. The development of a publicly accessible digital portal mapping platform would provide a clearer identification of which trees are protected by TPOs. It could also provide an explanation of the legal rules in relation to TPOs. Such a portal would help raise awareness of TPOs and would ensure that landowners, those contracted to perform works to trees and interested parties have access to the information they need to ensure that they can comply with their responsibilities.

Felling a tree that is protected by a TPO is a strict liability offence, meaning that ignorance of the TPO is no excuse. Nevertheless, we think that adding a further duty on those requiring others to carry out work on their behalf to check whether there is a TPO in place would add to the protection.

At present, a TPO is the only way of protecting an individual tree. There is no legal requirement, however, for local authorities to make a TPO on veteran trees in their area nor for them to actively seek out trees for protection.

The UK Government has commissioned a recent report on protecting trees of high social, cultural and environmental value which concludes that TPOs are insufficient to provide the necessary protection for these trees. It is in favour, instead, of the approach taken in some European countries where important trees are designated as national monuments. In our view that report's conclusions are relevant to Wales as well. The IEPAW agrees there is a need for clarification about which individual trees should be protected and why. Once a tree has been identified as 'important' in this respect, we support the idea that it should receive automatic protection through some sort of legal designation. We think there would be considerable merit in introducing a new type of legal designation akin to ancient monument to ensure that nationally important trees are given proper recognition and protection. In the meantime, we think the feasibility of making all ancient trees recorded in the Ancient Tree Inventory subject to TPOs should be explored.

Planning

The IEPAW welcome the emphasis placed on the protection of trees and woodland in the latest edition of Planning Policy Wales (PPW 12). These should lead to an enhanced awareness of the importance of trees and woodland. In our recommendations we make several suggestions for ways in which this policy might lead to changes in practice.

Other concerns still remain, however. In our view, the most important of these is the availability of suitably qualified and experienced arboriculturists within local authorities to assist them in their work on trees.

While the IEPAW endorses an approach that places particular emphasis on important trees, however these are defined, we also believe that there is a fundamental need to take account of the importance of all trees when decisions are made that will affect them. For this reason, we propose that planning policy should include a statement to ensure that, when a proposed development includes an intention to remove trees, due consideration is given to the alternatives to removal with a view to retaining as many trees as possible.

Looking to the Future

The Welsh Government has introduced several new initiatives on trees and woodlands. These include:

- draft Planning (Wales) Bill provisions on TPOs;
- Planning Policy Wales edition 12 (PPW 12);
- Sustainable Farming Scheme Universal Action 9 and 10;
- Trees and Hedgerows Stakeholder Delivery Group;
- Publication of *Ancient Woodland: Strengthening Protection*; and
- Publication of *Timber Industrial Strategy*

All these initiatives reflect the emphasis now being paid on the environmental importance of trees and woodlands. We, nevertheless, still question whether existing arrangements are sufficiently robust to ensure that our trees and woodlands are conserved for future generations. The existing legislative and policy framework is piecemeal and lacking in integration, with different layers of protection overseen by different authorities. This has resulted in an overly complex system of protection which has not always been applied in a consistent manner.

Most importantly, the enhanced recognition now attributed to the importance of trees and woodlands for their environmental, economic, social and cultural value must be matched by improved management and safeguarding. It is essential that the bodies with responsibility for the legislation, NRW and local authorities, are able to devote sufficient resources to the work.

Recommendations

Recommendations on Felling Licences

Recommendation 1: NRW and Local Authorities should, as soon as possible, introduce and implement a better monitoring programme utilising the best available technology to accurately record felling of trees in Wales. It is suggested that this should be instigated by the Welsh Government and implemented across Wales.

Recommendation 2: The Welsh Government in the next Senedd term should legislate to amend the Forestry Act to make it an offence to fail to comply with an environmental condition.

Recommendation 3: The Welsh Government in the next Senedd term should legislate to amend the Forestry Act to enable the court to make a restocking order.

Recommendation 4: The Welsh Government in the next Senedd term should introduce a presumption in law against granting felling licences for veteran and large mature trees in ancient woodlands.

Recommendation 5: The Welsh Government, within one year of the publication of this report, should ensure that NRW has the necessary powers to enable it to charge for felling licence applications subject to consultation.

Recommendation 6: NRW should develop a plan for charging for felling licences, once it is confirmed that it has the necessary powers to do so.

Recommendation 7: The Welsh Government, in the next Senedd term, should consider introducing civil sanctions in relation to the unlawful felling of trees.

Recommendation 8: The Welsh Government, in the next Senedd term, should legislate to ensure that where criminal penalties are used, they should be applied for individual trees felled rather than in relation to groups of trees.

Recommendations on TPOs

Recommendation 9: The Welsh Government should publish updated versions of TAN 10 and *Protected Trees: A Guide to Tree Preservation Procedures* as soon as the new Regulations are in force.

Recommendation 10: The Welsh Government should require, within a year of this report, that every Local Authority has a dedicated Tree Officer for the management of TPOs and should provide additional resources where necessary.

Recommendation 11: The Welsh Government should ensure, within one year of this report, that every Local Authority in Wales has access to specialist arboricultural experts and should provide funding specifically for this. We suggest this may be achieved by collaboration and pooling of resources as a way of sharing expertise between tree officers across Wales.

Recommendation 12: The Welsh Government, working with Local Authorities and NRW should set up a publicly accessible digital portal mapping platform to provide information on which trees are protected under TPOs.

Recommendation 13: The Welsh Government should legislate in the next Senedd term to place a duty on a contractor or a person who requires others to cut trees on their behalf to check whether the trees have a TPO before any felling work commences.

Recommendation 14: The Welsh Government should, within one year of the publication of this report, investigate the feasibility of making all ancient trees subject to TPOs and should commission research which examines the opportunities and implications associated with making TPOs on all veteran and ancient trees recorded in the Ancient Tree Inventory.

Recommendation 15: The Welsh Government should, in the next Senedd term, set up a working group to consider the benefits of a new designation of 'Important Tree'.

Recommendations on Planning

Recommendation 16: All Local Authorities in Wales should take account of the British Standard 5837 in preparing and implementing their Local Development Plan.

Recommendation 17: The Welsh Government should, within one year of the publication of this report, change planning policy to require Local Authorities to consult with their specialist arboricultural experts on any planning application that has a significant implication for trees.

Recommendation 18: The Welsh Government should, within one year of the publication of this report, update planning policy to require planning applicants to identify in plans for development root protection zones for any trees to be retained as part of that development.

Recommendation 19: Local Authorities, when preparing and implementing their LDP, should provide a detailed explanation of how development proposals involving the loss of trees or damage to tree roots will be determined.

Recommendation 20: We recommend that Local Authorities monitor the felling of trees where this is carried out as part of development.

Recommendation 21: We recommend that the next revision of PPW should include a statement to ensure that, when a proposed development includes an intention to remove trees, due consideration is given to the alternatives to removal with a view to retaining as many trees as possible.

Table of Abbreviations

ASNW	Ancient Semi-Natural Woodland
ATI	Ancient Tree Inventory
AWI	Ancient Woodland Inventory
AWSU	Ancient Woodland Site of Unknown Category
CAVAT	Capital Asset Value for Amenity Trees
Confor	Confederation of Forestry Industries
DCP	Development Control and Practice
DPAS	Development Planning Advisory Service
Defra	Department of Environment, Food and Rural Affairs
EIA	Environmental Impact Assessment
ELA	Environmental Law Academy
EU	European Union
FAO	Food and Agriculture Organisation
FLEGT	Forest Law Enforcement, Governance and Trade
FMP	Forest Management Plan
FMU	Forest Management Unit
HRA	Habitats Regulations Assessment
IEPAW	Interim Environmental Protection Assessor for Wales
IUCN	International Union for the Conservation of Nature
LDP	Local Development Plan
LPA	Local Planning Authority
NFI	National Forest Inventory
NFU	National Farmers' Union
NPA	National Park Authority
NRW	Natural Resources Wales
PAWS	Plantation on Ancient Woodland Site
PEDW	Planning & Environment Decisions Wales
PPW	Planning Policy Wales
RAWS	Restored Ancient Woodland Sites
RIBA	Royal Institute of British Architects

SEA	Strategic Environmental Assessment
SMNR	Sustainable Management of Natural Resources
SPG	Supplementary Planning Guidance
SSSI	Site of Special Scientific Interest
TAN	Technical Advice Note
TCPA	Town and Country Planning Act 1990
TPO	Tree Preservation Order
TWIG	The Woodland Investment Grant
UA	Universal Action
UKFS	UK Forestry Standard
UKWAS	UK Woodland Assurance Scheme
WGWE	Welsh Government Woodland Estate
WPO	Woodland Preservation Order
WSAP	Woodland Strategy Advisory Panel

1 Purpose of Report

The IEPAW decided to write a report on the law relating to trees in response to submissions received between March and May 2021. Redacted versions of these separate submissions are at Appendix 1.

Both submissions questioned whether the legislative framework for the protection of trees and woodlands is effective across its different mechanisms. The concerns raised included:

- whether the law relating to tree felling, Tree Preservation Orders (TPOs) and the planning system adequately addresses the value of trees for their biodiversity and wildlife value;
- whether the tools available for the protection of trees and woodland are sufficient to ensure that unlawful felling of trees in Wales does not occur, and if it does, there is adequate enforcement to deter such activity; and
- whether the process of applying for a tree felling licence is sufficiently robust to control the felling of trees in order to protect the value to the environment that they provide.

Two further submissions were received in 2023. The first of these raised concerns over the general condition of trees in Wales and the apparent lack of enforcement of relevant regulations by Natural Resources Wales (NRW) and local authorities. A redacted version of this submission is included in Appendix 1. The other submission referred to the failure of a National Park Authority (NPA) to enforce TPO regulations. As the issue raised was part of an ongoing dispute with the NPA it was not followed up specifically by the IEPAW.

To address the issues raised in the submissions this report assesses:

- whether the TPO, felling licence and planning legal framework, including enforcement and practical implementation, adequately protect trees from being felled and, if not, what aspects of the regime can be improved and the ways in which these improvements can be made; and
- whether any fundamental changes to the legal framework are necessary and if so, the characteristics of the changes required.

The report begins with an overview of the status of trees and woodland in Wales. This is followed by separate sections on the law relating to the felling of trees, TPOs and the planning system. Where there is overlap between these legal regimes, this is referred to in the text.

The report does not consider the law relating to tree planting, in particular the application of requirements for Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA). We received a submission expressing concern on this topic but as it related to a particular alleged breach it was deemed to be out of scope.

1.1 Approach Taken

The first step in producing this report was a literature review of the relevant legal, policy and governmental frameworks.

Secondly, rather than issue a Call for Evidence, we decided to seek evidence from stakeholders who had sat on the Woodland Strategy Advisory Panel (WSAP). This approach was taken mainly because of the communication challenges caused by Covid. The WSAP had advised Ministers on the implementation and review of the Wales Woodland Strategy, as well as a range of forestry related issues. The Panel consisted of up to 20 independent members with a range of policy and technical expertise from organisations such as the Confederation of Forestry Industries (Confor), the Institute of Chartered Foresters, Coed Cadw, members of academia, Natural Resources Wales (NRW), the National Farmers' Union (NFU) Cymru, the Animal and Plant Health Agency and the private forestry sector. Although it was closed

in 2021 pending a refresh of the Panel, Panel members continued to provide support to the Welsh Government on a range of issues until its replacement by the Trees and Timber Deep Dive Delivery Panel later that year.¹

Following this, discussions were held with planning officers and appropriate Welsh Government policy teams in relation to:

- the application of law for the protection of trees in Wales;
- the interaction between felling licences, TPOs and the planning system; and
- the role of biodiversity and habitats protection in tree preservation.

¹ <https://www.gov.wales/woodland-strategy-advisory-panel>

2 Background

The environmental value of trees is undeniable in terms of both the biodiversity that they support and the other ecosystem services that they provide. Trees play an important role in combatting the climate crisis; they store carbon, conserve water and help to retain soils. They are also a source of energy and timber. The importance of the woodland resource and the need for good woodland management was emphasised by the Welsh Government in the Climate Adaptation Plan Technical Annex which states:

‘Our woodlands act as areas for recreation and means of income, bringing benefits to health, our communities and the economy. However, the measures to protect them could be improved. Pests and diseases have significant potential to impact on the health of trees and woodlands and undermine their timber productivity and the benefits they provide as habitats.’²

The Welsh legislative framework, including both the Well-being of Future Generations Act (Wales) 2015 and the Environment (Wales) Act 2016, have placed sustainable development and, more specifically, the sustainable management of natural resources at the heart of decision-making across Welsh Government. These statutes require public bodies in Wales to consider the long-term impact of their decisions and to work with communities to tackle persistent problems, such as climate change and biodiversity loss. Forestry is a devolved matter. As such, Wales has its own forestry strategy and programmes which are designed to protect and enhance forestry and woodlands in Wales.

² Welsh Government (2019) *Prosperity for All: Climate Conscious Wales: A Climate Change Adaptation Plan for Wales: Technical Annex*. Welsh Government at p.35. Available at: <https://www.gov.wales/sites/default/files/publications/2020-03/prosperity-for-all-a-climate-conscious-wales-technical-annex.pdf>.

2.1 Welsh Government Woodlands for Wales Strategy

In 2018, the Welsh Government published the latest version of Woodlands for Wales,³ its 50-year strategy and vision for woodlands and trees. The strategy is built around four strategic themes:

- responding to climate change;
- woodlands for people;
- a competitive and integrated forest sector; and
- environmental quality.

2.1.1 Responding to Climate Change

The Strategy notes the significant potential for the woodlands and trees of Wales to contribute directly to efforts to deal with climate change but makes it clear that this can only be achieved if they themselves can cope with changing weather patterns and new risks from pests and diseases. This contribution is twofold:

- actively growing trees will be sequestering carbon during photosynthesis, and locking it up in timber and in woodland soils, thereby removing some of the atmospheric carbon dioxide that we have created; and
- timber products harvested from sustainably managed forests can provide an additional store of carbon absorbed from the atmosphere.⁴

2.1.2 Woodlands for People

The Strategy lists four key outcomes whereby woodlands and trees can contribute to the improvement of people's well-being:

- more communities are involved with, and benefit from their local woodlands and trees;

³ Welsh Government (2018) *Woodlands for Wales: The Welsh Government's Strategy for Woodlands and Trees*. Available at: https://www.gov.wales/sites/default/files/publications/2018-06/woodlands-for-wales-strategy_0.pdf

⁴ Ibid at p. 20.

- more people, of all ages, benefit from education and learning opportunities provided in, and by, woodlands and trees;
- more people live healthier lives as a result of using, enjoying, and living in proximity to, woodlands and trees; and
- more people benefit from woodland-related enterprises and associated employment opportunities.⁵

2.1.3 Competitive and Integrated Forest Sector

The Strategy lists four key outcomes for the Welsh forest sector:

- more timber is grown, processed and used in Wales;
- the forest sector remains competitive and sustainable, supporting the Welsh economy;
- increased use of timber as a key renewable resource; and
- a thriving, skilled workforce in the forestry sector that can adapt to change.⁶

2.1.4 Environmental Quality

The Strategy identified key outcomes to safeguard and improve the environmental quality of woodlands and trees in Wales, and to extend the range of ecosystem services they provide:

- woodland management achieves high standards of environmental stewardship;
- woodlands and trees of special conservation value are identified, protected and in favourable management;
- woodland biodiversity is supported and native woodland is in favourable management;

⁵ Ibid at p. 25

⁶ Ibid at p. 34.

- woodlands and trees make a positive contribution to the special landscape character of Wales, to sites of heritage and cultural importance and the urban landscape; and
- woodlands and trees contribute to water and soil management.⁷

The Strategy refers to Wales' Natural Resources Policy which sets out a commitment to carefully manage trees and woodland of high environmental values, including ancient woodland sites, ancient, veteran⁸ and heritage trees and notes that these are an irreplaceable resource providing a wide range of ecosystem services.⁹ It further states, however, that only about 5 per cent of woodlands in Wales have designated conservation status. Of these about 39 per cent are in Special Areas of Conservation.

Ancient woodlands, defined as an area that has been wooded continuously since at least 1600 CE¹⁰, do not benefit from specific statutory protection. If they are not protected because of their presence within a protected area such as a Site of Special Scientific Interest (SSSI), the only other option is a Tree Preservation Order (TPO).¹¹

One of the outcomes in the Strategy is that 'woodland biodiversity is supported and native woodland is in favourable management'.¹² It goes on to state that '[i]t is important to protect the structure and functioning of woodland habitat networks and, where necessary, to reverse the fragmentation of semi-natural habitat'.¹³ Better support for decision making and management to improve the condition of priority native woodland habitats, and of woodlands that support priority species is listed as one of the desired outcomes of the Strategy.¹⁴

⁷ Ibid at p. 40.

⁸ The UK Forestry Standard (UKFS) defines 'veteran tree' as a 'tree of considerable age that is of interest biologically, culturally, or aesthetically because of its age, size or condition, including the presence of deadwood micro-habitats'. See Glossary at <https://cdn.forestryresearch.gov.uk/2023/10/The-UK-Forestry-Standard.pdf>

⁹ Ibid at Section 6.2, p. 42.

¹⁰ See note 8 above.

¹¹ TPOs are made by Local Planning Authorities under Town and Country Planning (Trees) Regulations 1999. TPOs are discussed in detail under Section 4 below.

¹² Note 3 above at Section 6, p. 40.

¹³ Ibid at Section 6.3 p. 44.

¹⁴ Ibid at Section 6.3 p. 45.

2.2 Status of Trees and Woodlands in Wales

Despite the rural nature of Wales, it is one of the least wooded countries in Europe, with woodland covering only 15 per cent of the land area, compared to an average of 38 per cent in the European Union (EU).¹⁵ Provisional statistics published by Forest Research for 2025 reported that there were 313,000 ha of woodland in Wales of which just under half were softwood (conifer) and the rest hardwood (broadleaf).¹⁶ The publicly owned Welsh Government Woodland Estate (WGWE) comprises 115,000 ha managed by NRW and there are 198,000 ha under private ownership. Figures for the WGWE, however, do not include woodland managed by NRW in national nature reserves and it is estimated that these may amount to a further 900 ha.¹⁷ The total area of woodland in Wales has shown a slight increase since 1998. In 2020, 121,000 ha of land in Wales were classed as ‘farm woodland’.¹⁸

It is estimated that there are an additional 92,700 ha of tree cover outside of defined woodlands in Wales. More than half of this area comprises trees growing along linear features such as hedgerows, riverbanks and roadsides, while the rest is made up of trees found in orchards, parks, wood pastures and urban areas.¹⁹ The Welsh Government owns almost two-thirds of the conifer woodland (including planted woodland on ancient woodland sites) and one fifth of the native woodland. This includes a small proportion of the ancient semi-natural woodland which is distributed widely across Wales. According to the Woodlands for Wales Strategy, most of the ancient semi-natural woodlands and other native woodlands are not publicly owned. Many ancient woodlands were cleared and replanted with conifers in the post-war period and it is estimated that nearly a third of ancient woodland sites are comprised of these Plantations on Ancient Woodland Sites (PAWS). With appropriate management some of these could be restored to native woodland. The latest Ancient

¹⁵ Ibid at p. 7.

¹⁶ Forest Research (2025) *Provisional Forestry Statistics 2025* Available at https://cdn.forestresearch.gov.uk/2025/06/provisional-woodland-statistics_2025-06-26_WEB.pdf. A detailed breakdown of trends in the ownership of different types of woodland in Wales is given in *Timber Industrial Strategy Data Annex* Forestry Research, 15 July 2025. Available at <https://cdn.forestresearch.gov.uk/2025/07/Timber-Industrial-Strategy-Data-Annex.pdf>.

¹⁷ Ibid at p. 9.

¹⁸ See note 3 above at p. 48.

¹⁹ See note 3 at p. 7.

Woodland Inventory (AWI) maps²⁰ show the distribution of ancient woodlands under four categories:

- Ancient Semi Natural Woodland (ASNW)
- Restored Ancient Woodland Sites (RAWS)
- PAWS
- Ancient Woodland Site of Unknown Category (AWSU)

According to Coed Cadw,²¹ over 6,000 ancient trees in Wales are recorded in the Ancient Trees Inventory (ATI).²² It is estimated that there are about 95,000 ha of ancient woodland sites in Wales of which 42,000 ha are ancient semi-natural woodlands which have been continuously managed as semi-natural woodland.²³

Total tree coverage in Wales includes urban trees as well as roadside and hedgerow tree coverage. Urban canopy cover fell to an estimated mean of 16.3 per cent in 2013 compared to 16.9 per cent in 2009.²⁴ It has increased slightly since then. The latest estimate, for 2019, is 16.41 per cent an increase of just 0.07 per cent (61 ha).²⁵ The figure for different local areas varies widely.

The Welsh Government is creating a National Forest for Wales, a network of woodlands stretching across Wales. It will allow everyone in Wales to access and connect with our woodland and trees. It will:

²⁰ Ancient Woodland Inventory 2021 Published by NRW on 9 April 2025. Available at https://datamap.gov.wales/layers/inspire-nrw:NRW_ANCIENT_WOODLAND_INVENTORY_2021

²¹ *Action for Trees and Woodland Protection in Wales* available at <https://business.senedd.wales/documents/s133027/Woodland%20Trust%20-%20Additional%20paper.pdf>

²² <https://ati.woodlandtrust.org.uk/>

²³ Welsh Government *Ancient Woodland: Strengthening Protection* June 2025. Available at <https://www.gov.wales/ancient-woodland-strengthening-protection>.

²⁴ Natural Resources Wales (2016) *Tree Cover in Wales' Towns and Cities*. Available at <https://naturalresources.wales/media/680678/revised-english-wales-urban-canopy.pdf>.

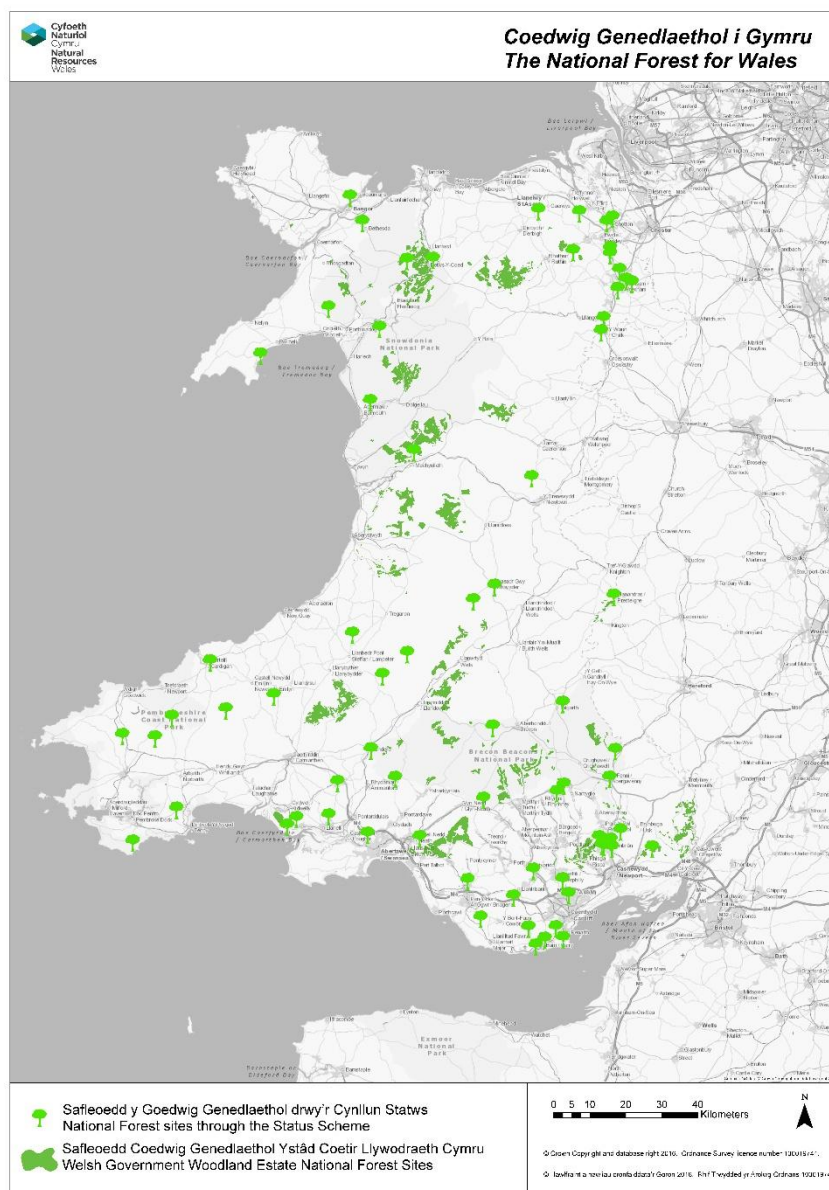
²⁵ Hodges, C. 2020. *Tree Cover in Wales' Towns and Cities: update 2020* – Updated information to help us understand canopy cover to better plan and manage our urban trees. Report No: 465, 26pp, Natural Resources Wales, Bangor (Gwynedd) Available at <https://clubb.cymru/wp-content/uploads/2023/08/Tree-Cover-in-Wales-Towns-and-Cities-update-2020.pdf>

- create new areas of woodland;
- restore and maintain our existing woodlands;
- protect nature and address biodiversity loss;
- support our health and wellbeing;
- provide spaces for leisure and nature;
- help to capture and store carbon;
- provide timber - a sustainable resource for construction.

Creating a National Forest in Wales is a long-term commitment, spanning many decades. Forestry managers can apply for National Forest status for their woodlands.²⁶ Figure1 shows the current National Forest Wales sites, as of 30/07/25.

²⁶ <https://www.gov.wales/become-part-national-forest-wales#154727> .

Figure 1 National Forest Sites²⁷



2.3 The Legal Landscape

There are three key areas of legislation relevant to the protection of trees and woodlands in Wales: the Forestry Act 1967, which includes provisions on felling licences; the Town and Country Planning Act 1990 (TCPA) Parts II and III of which

²⁷ Ibid.

include general measures on Local Development Plans and planning consent and TCPA Part VIII which has a chapter on trees including Tree Preservation Orders (TPOs).

There is an overlap between these regimes. For example, a TPO does not prevent planning permission from being granted. At the same time, activities that would normally be prohibited under a TPO without express consent are exempt from the requirement to apply for consent if the trees are in the way of development proceeding where planning permission has been granted. A felling licence will normally be needed for the removal of a tree, but this is not the case where planning permission has been granted.

This report deals with each of these regimes separately, taking note of the overlaps as appropriate. The report is not concerned with other statutory regimes of relevance to the protection of trees and woodlands in Wales such as protected site legislation.

2.4 Definitions

The terms ‘tree’, ‘woodland’ and ‘forest’ have not been clearly defined in legal terms. The Forestry Commission has published a guide to the interpretation of the words ‘trees and woodland’.²⁸ Although the guide applies to England only, NRW uses the same terms as they apply in England, in Wales.²⁹

2.4.1 Trees

The Oxford English Dictionary defines a tree as ‘a perennial plant with a self-supporting woody main stem, usually developing woody branches at some distance from the ground and growing to a considerable height and size’ but there is no statutory definition. The Forestry Commission guidance states that ‘to be considered a tree, the plant must have at least one woody stem and be expected to achieve a height of at

²⁸ <https://www.gov.uk/government/publications/definition-of-trees-and-woodland/definition-of-trees-and-woodland>.

²⁹ Comment on draft report from NRW received 6 August 2025.

least 5 metres'. It goes on to say, 'if an individual specimen had not reached 5 metres in its present location, but the plant species typically meets this definition, we will still consider it a tree'. This interpretation is stated to apply to all trees, including woodland trees, hedgerow trees and trees outside woodland.

There is some relevant case law. In *Bullock v Secretary of State for the Environment* [1980]³⁰ the High Court ruled that 'bushes and scrub nobody I suppose would call "trees," nor indeed shrubs, but it seems to me that anything which ordinarily one would call a tree is a tree' and that 'what grows in a coppice generally speaking would be trees'.

In *Palm Developments Ltd v Secretary of State for Communities and Local Government and Medway Council* [2009] it was held that, for the purposes of a TPO, a tree must mean anything which would ordinarily be regarded as a tree, thus excluding bushes, shrubs and scrub, but including small trees. The case confirmed that there are no limitations in terms of size for what is to be regarded as a tree, and that it can include saplings.³¹

The decision was followed in *Distinctive Properties (Ascot) Limited v Secretary of State for Communities and Local Government* [2015],³² where the Court of Appeal agreed 'that a tree is to be so regarded at all stages of its life, subject to the exclusion of a mere seed. A seedling would therefore fall within the statutory term, certainly once it was capable of being identified as of a species which normally takes the form of a tree' and further 'if the plant is of a tree species, I can see no reason why it should be excluded from the meaning of the word tree'.

³⁰ *Bullock v Secretary of State for the Environment* [1980] 1 EGLR 140 at 142.

³¹ *Palm Developments Ltd v Secretary of State for Communities and Local Government and Medway Council* [2009] EWHC 220 (Admin) at para 47. See also Lowther, J. Seeing the wood for the trees: some clarification on tree preservation orders – (2009) 21(1) ELM: 22.

³² *Distinctive Properties (Ascot) Limited v Secretary of State for Communities and Local Government* [2015] EWCA Civ 1250 at para. 42.

The Law Commission³³ has concluded that neither ‘tree’ nor ‘woodland’ should be defined in planning law in the context of TPOs, because it was unlikely that any exclusive definition of ‘tree’ would be entirely satisfactory. They considered a partial definition, stating that a ‘tree’ does not include a bush or a shrub, would create as much uncertainty as it would avoid. They suggested, instead, that non-statutory guidance would be more useful.

2.4.2 Woodland

The Forestry Commission notes that there are many definitions of the term ‘woodland’.³⁴ These broadly refer to

- minimum area;
- minimum or average width;
- (potential) canopy cover;
- tree height;
- minimum tree stocking density;
- proportion and composition of open space.

Their interpretation is that to be considered ‘woodland’, a site must meet all of the following:

- a minimum area of 0.5 ha;
- a minimum width of 20 m;
- a potential tree canopy cover of at least 20 per cent; and
- a canopy consisting of specimens that meet the definition of trees.

Similarly, the National Forest Inventory for Great Britain covers any forest or woodland of at least 0.5 ha, with a minimum width of 20 m and having a tree canopy cover of 20 per cent or the potential to achieve this.³⁵

³³ Law Commission 2018 *Planning Law in Wales Final Report* at para. 15.12. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/912221/6.5134_LC_Welsh-Planning-Report_Final_281118_FINAL_WEB.pdf.

³⁴ Note 28 above.

³⁵ Forest Research *About the NFI*. Available at <https://cdn.forestresearch.gov.uk/2025/07/Timber-Industrial-Strategy-Data-Annex.pdf>.

Woodlands for Wales refers to woodland as

‘land where the ecological condition is, or will be, strongly influenced by the tree canopy. In terms of land cover statistics (in the UK), woodland is currently defined as land with trees where the mature trees would cover more than 20 per cent by area. Large tracts are generally called forests, smaller units are described in a variety of terms such as woodlands, woods, copses and shelterbelts. There is no minimum size for a woodland’³⁶.

The definition of woodland utilised by UK forestry statistics is different:

‘land under stands of trees with a canopy cover of at least 20 per cent ... or having the potential to achieve this. The definition relates to land use, rather than land cover, so integral open space and felled areas that are awaiting restocking are included as woodland’³⁷

As far as the IEPAW is aware there is no specific agreed international definition of woodland. A Food and Agriculture Organisation (FAO) working paper³⁸ defines ‘other wooded land’ as:

- land with a canopy cover of 5–10 per cent of trees able to reach a height of 5 metres in situ; or
- land with a canopy cover of more than 10 per cent when smaller trees, shrubs and bushes are included.

³⁶ Note 3 above at p.55.

³⁷ Forest Research (2023) *Woodland Area*. Available online at: https://cdn.forestresearch.gov.uk/2023/09/Introduction-and-glossary_FS2023-1.pdf.

³⁸ Forest Research Assessment Programme *On Definitions of Forest and Forest Change* FAO Rome (2000) section 2.3.

Woodland has not been defined in case law. It is referred to in the *Palm Developments Ltd* judgement³⁹ but only to state that a TPO for a woodland extends to all trees in the woodland, including those [trees] not in existence at the time the order was made.

2.4.3 Forest

Again, there is no statutory definition for forest in domestic law. The EU's Regulation on deforestation-free products⁴⁰ defines 'forest' as

'land spanning more than 0.5 hectares with trees higher than 5 metres and a canopy cover of more than 10 per cent, or trees able to reach those thresholds in situ, excluding land that is predominantly under agricultural or urban land use.'

This appears to have been based on the definition included in the FAO working paper referred to above.⁴¹

Similar definitions have been applied in relation to some international agreements including the Convention on Biological Diversity and the Kyoto Protocol.⁴²

However, it is useful to refer to the definition in *Woodlands for Wales* which defines forest as, 'generally large areas of predominantly tree covered land'.⁴³ This is in line with the definition provided in the UK Forestry Standard (UKFS) which is that a forest is 'land predominantly covered in trees (defined as land that is under stands of trees with a canopy of at least 20%) whether in large tracts (generally called forests) or

³⁹ *Palm Developments Ltd v Secretary of State for Communities and Local Government and Medway Council* [2009] EWHC 220 (Admin).

⁴⁰ EU Regulation 2023/1115 Article 2.

⁴¹ Note 38 above at section 2.2.

⁴² See Lesniewska F *Definitions of 'Forests' in International Environmental Law: Implications for Ecosystems, Forest Peoples and Climate Change* 8th IUCN ELA Colloquium, 15th September 2020, Ghent.

⁴³ See Note 3 above at p. 53.

smaller areas known by a variety of terms (including woods, copses, spinneys or shelter belts)'.⁴⁴

2.4.4 Conclusion on Definitions

The IEPAW does not consider that there would be any benefit in putting definitions of tree and woodland on a statutory basis. These are the relevant definitions for the Forestry Act; however, they do not apply in planning law or in relation to TPOs. There can be an overlap between the legal regimes, and it is important that the definitions used are not contradictory.

⁴⁴ UK Forestry Standard 5th Edition, Glossary, available at https://assets.publishing.service.gov.uk/media/651670336a423b0014f4c5c0/Revised_UK_Forestry_Standard_-_effective_October_2024.pdf.

3 Felling Licences

3.1 Forestry Act

Forestry has been a fully devolved matter in Wales since July 1999 when the provisions of the Government of Wales Act 1998 came into force. Although much of the forestry legislation had been made on an England and Wales basis it can now be amended with respect to Wales.

The Forestry Act 1967 is the key statute relating to forestry in England and Wales. The Act consolidates and amends previous Forestry Acts made since 1919 and sets out the duties of the Forestry Commissioners. The role of Forestry Commissioner in Wales is now held by NRW⁴⁵ which accordingly has the general duty of promoting:

- the interests of forestry;
- the development of afforestation;
- the production and supply of timber and other forest products; and
- the establishment and maintenance of adequate reserves of growing trees.⁴⁶

In discharging its functions under the Act, NRW shall, as far as may be consistent with the proper discharge of those functions, endeavour to achieve a reasonable balance between:

- a) the development of afforestation, the management of forests; and
- b) the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest.⁴⁷

Part II of the Act is concerned with the regulation of tree felling and is not specifically concerned with the protection of trees. The term 'tree felling' can refer to the partial or complete cutting of trees. This ranges from the complete removal of a tree for timber production or land clearance to the pruning of trees for cosmetic or tree health reasons.

⁴⁵ Change made under the Natural Resources Body for Wales (Functions) Order 2023 (No. 755).

⁴⁶ Forestry Act 1967 ss 2 and 3.

⁴⁷ Ibid, s. 3A, added by the Wildlife and Countryside (Amendment) Act 1985 s. 4.

The requirement for a licence to fell, however, is only required for the complete cutting of a tree.

3.2 Licensing Requirements

Section 9 of the Forestry Act sets out the requirements for a felling licence. Not all felling activities require a licence however and there are exemptions from the requirements depending, amongst other things, on the size and locality of the tree, the purpose of the felling and the amount of timber to be felled.

NRW is the licensing authority in Wales. Applications for a felling licence to NRW can be made online and there is no cost for making an application.⁴⁸ Section 10 of the Act requires NRW to grant a licence unconditionally unless they determine that conditions are required for the securing the following purposes⁴⁹:

- a) the restocking or stocking with trees of the land on which the felling is to take place, or of such other land as may be agreed;
- b) the maintenance of those trees in accordance with the rules and practice of good forestry for a period not exceeding ten years;
- c) in relation to land in Wales, after consultation with the applicant for the licence, for the purpose of
 - (i) conserving or enhancing natural beauty or
 - (ii) conserving flora, fauna, geological or physiographical features or natural habitats.

Under certain circumstances NRW can amend, suspend or revoke a felling licence. If a condition is not being or has not been complied with, conditions can be varied, the licence can be suspended in full or in part or, in the case of failure to comply with the conservation conditions, the licence can be revoked.⁵⁰ Furthermore, if felling carried

⁴⁸ NRW (2021) *Apply for a felling licence*. Available at: <https://naturalresources.wales/permits-and-permissions/tree-felling-and-other-regulations/tree-felling-licences/apply-for-a-felling-licence/?lang=en>.

⁴⁹ Conditions a) and b) are set out in s.12; condition c) is set out in s. 10 which was added by the Agriculture (Wales) Act 2003 s. 37.

⁵⁰ Forestry Act ss. 24, added by the Agriculture (Wales) Act 2023 s. 37.

out in accordance with a licence is causing or is likely to cause significant harm to the conservation interests, NRW can suspend, amend or revoke the licence.⁵¹

Unconditional felling licences allow for felling without the requirement to replant. There are several reasons for granting an unconditional licence. For example, felling may be necessary where trees are diseased or may be needed for habitat or peatland restoration. Forestry statistics show that typically less than 100 ha are covered by unconditional licenses each year. Unconditional felling licences are routinely issued for thinning operations,⁵² when no woodland is lost.

3.3 Enforcement

The offence for felling without a licence in Wales is set out in section 17(1) of the Act:

Anyone who fells a tree without the authority of a felling licence, the case being one in which section 9(1) of this Act applies so as to require such a licence, shall be guilty of an offence and liable on summary conviction to a fine.

Until recently, the level of fine was restricted to a fine ‘not exceeding level 4 on the standard scale or twice the sum which appears to the court to be the value of the tree⁵³, whichever is the higher’. This restriction was removed by section 42 of the Agriculture (Wales) Act 2023 thereby bringing the law in line with changes introduced by the Environment Act 2021 for England.

⁵¹ Ibid s 24E.

⁵² Thinning is an established woodland management practice which enables the stronger trees to grow faster and retain health rather than competing for space, light and soil nutrients. and https://cdn.forestresearch.gov.uk/2024/10/Ch1_Woodland-WA-amendment.pdf.

⁵³ The use of CAVAT (Capital Asset Value for Amenity Trees) has recently been used in respect of the Sycamore Gap case. For a discussion see *Trees in a Pod – the Tree Law Podcast* available at <https://www.treelaw.co.uk/trees-in-a-pod/>.

The decision on whether to prosecute is taken by NRW in line with their Enforcement and Prosecution policy.⁵⁴ Where a person has committed an offence under section 17, NRW has the power to issue a restocking notice. This requires the person on whom the notice is served to restock or stock the land with trees and to maintain that land with trees under the practices of good forestry.⁵⁵ In the event that the person fails to comply with the restocking notice, section 17(C) provides that NRW can issue an enforcement notice under section 24 which will result in either NRW doing the works themselves or enforcing through the court process as a breach.

Enforcement notices can also be issued where there has been a failure to comply with licence conditions. It is an offence liable on summary conviction to a fine not exceeding level 5 to fail to take any steps required in an enforcement notice without reasonable excuse.⁵⁶

The land use planning system and the legislation for forestry comprise separate but co-ordinated statutory schemes. Where a tree is subject to a TPO and an application for a felling licence is made, NRW must notify the local authority if they intend to grant the licence.⁵⁷ NRW can also refer the application to the appropriate local authority.⁵⁸ If the local authority objects to the notice, the application will be referred to the Minister to be dealt with under the Town and Country Planning Act 1990 rather than the Forestry Act 1967.⁵⁹

If NRW intend to vary or revoke a licence relating to a tree protected by a TPO, it must notify the relevant local authority. If the local authority objects the matter is referred to the Minister. The requirement to notify the local authority does not apply in emergency

⁵⁴ Natural Resources Wales (2021) *Regulatory Responsibilities: Annex 1 Enforcement and Sanctions Policy*. Available online at: <https://naturalresources.wales/about-us/what-we-do/what-we-regulate/our-regulatory-responsibilities/enforcement-and-sanctions-policy-annex-1-variable-monetary-penalty/?lang=en>.

⁵⁵ Forestry Act 1967 s. 17(A).

⁵⁶ Ibid s. 24(4).

⁵⁷ Ibid s. 15(1)(a). Note, however, that NRW's ability to do this is dependent on the owner having informed NRW that a TPO is in place. See section 4.3.1 below at question 2.

⁵⁸ Ibid s. 15(1)(b).

⁵⁹ Ibid s. 15(2)(a) and (b).

situations where the proposal is being made to prevent imminent serious harm to the conservation interest.⁶⁰

The interaction between the two statutory schemes was considered in detail in the Court of Appeal case of *Arnold White Estates Ltd (appellant) v The Forestry Commission (Respondent)*.⁶¹ The facts of the case are as follows:

- 2016 Appellant granted outline planning permission;
- 2018 Forestry Commission granted felling licence subject to conditions to restock;
- 28 July 2020 Forestry Commission served s. 24 notice requiring compliance with conditions;
- 14 September 2020 Appellant granted full planning condition

The key question before the Court was what is the effect of subsequent planning permission for development whose construction would make it impossible to comply with the conditions and the subsequent s. 24 notice.

Sir Keith Lindblom, delivering the judgment dismissing the appeal made the following observations:

Where Parliament has seen the need to do so, it has expressly provided in the 1967 Act for the interrelationship of the land use planning system and the legislation for forestry. Section 9(4)(d) provides explicitly for the relationship between the requirements for a felling licence in specified circumstances and grants of planning permission. And section 15 provides for the relationship between felling licences and trees with the protection of a tree preservation order. (para. 64).

In section 9(4)(d) Parliament has created an exemption for felling “immediately required for the purpose of carrying out development

⁶⁰ Ibid s. 24F added by the Agriculture (Wales) Act 2023 s. 37.

⁶¹ *Arnold White Estates Ltd v Forestry Commission* [2022] EWCA Civ 1304.

authorised by planning permission”. ... It would exclude an outline planning permission without the necessary approval of reserved matters. (para. 65).

I would reject [the] proposition that the reserved matters approval ... would then have the effect of removing the need for compliance with the requirements of the restocking conditions on the felling licence itself ... (para. 67).

... Parliament did not approve, either in the 1967 Act or in the planning legislation, that the statutory provisions for felling licences would be disapplied, or the conditions imposed on a felling licence ... annulled, automatically or retrospectively by a later planning permission. (para. 68).

3.4 Amendments made by Agriculture (Wales) Act 2023

Part 4 of the Agriculture (Wales) Act 2023 is concerned with forestry. It made amendments to the Forestry Act with respect to Wales on the following matters⁶²:

- (a) to expand the range of circumstances in which conditions may be attached to tree felling licences by adding ‘for the purposes of conserving or enhancing natural beauty, or for the purposes of conserving flora, fauna, geological or physiographical features’, but only after consultation with the applicant for the licence;
- (b) to enable tree felling licences to be amended by agreement;
- (c) where there is or has been a breach of a condition of a tree felling licence, to enable [NRW] to vary or remove the conditions of the licence, or to add further conditions, or to suspend or revoke the licence, and to require steps to be taken following the breach;
- (d) where tree felling in accordance with a tree felling licence is causing, or is likely to cause, significant harm to certain aspects of the environment, to enable [NRW] to amend the tree felling licence or to suspend or revoke it;

⁶² Agriculture (Wales) Act 2023 Part 4 s. 36 Overview of Part.

- (e) to remove the limit on fines that may be imposed for the offence of felling trees without the authority of a tree felling licence;
- (f) to make provision consequential upon the amendments referred to in paragraphs (a), (c) and (d).

The amendments go some way towards bringing forestry permitting in line with NRW's other regulatory regimes.⁶³ The new powers to add conditions and to amend, suspend, or revoke felling licences were introduced to prevent felling that would contradict other environmental legislation. The intention is to provide better safeguards for wildlife and provide protection from environmental damage and bring the Forestry Act 1967 closer in line with other environmental legislation such as the Environment (Wales) Act 2016 and the Conservation of Habitats and Species Regulations 2017.

3.5 Evidence on Felling Licences

Evidence relating to the application of the Felling Licensing regime in Wales was gathered from several organisations. It should be noted that this evidence predates the amendments made by the Agriculture (Wales) Act 2023 which address some of the concerns raised. Where this is the case, this is indicated in the text.

3.5.1 Questions posed to Stakeholders

Stakeholders were asked the following questions.

1. Do you think that the process of applying for felling licences across Wales is clear, transparent and accessible?
2. What issues/benefits do you perceive in relation to the process for obtaining felling licences? If there is scope for improvement, how could this be achieved?
3. What is your view of Felling Licences as a mechanism for preventing the felling of trees that require protection?

⁶³ Welsh Government (June 2023) Explanatory Memorandum to the Agriculture (Wales) Bill para. 3.288. Available at: <https://senedd.wales/media/ziapzovl/pri-ld15888-em-e.pdf>.

4. Are there alternative mechanisms that could be utilised?
5. Are there mechanisms, that you are aware of, that are utilised in other countries to manage the felling of trees appropriately?
6. In what ways are biodiversity, and in particular wildlife conservation and protection taken into consideration when felling licences are applied for and considered?

1 Do you think that the process of applying for felling licences across Wales is clear, transparent and accessible?

Respondents generally agreed that the process of applying for felling licences across Wales was clear, transparent and accessible. There were concerns, however, about the level of public awareness about the process, as well as its timeliness in decision-making. NRW noted that the number of felling licence applications had doubled from 250 per year in 2013 to 510 in the 2021-22 financial year. They considered that this increase suggested that the process was reasonably clear, transparent and accessible.⁶⁴ However, they also noted that there had been a recent increase in alleged illegal felling. One reason for this was thought to be landowner concern over liability for damage or accident due to ash trees severely affected by ash dieback.

Evidence from a former Forestry Commissioner and WSAP member noted that, while the majority of licences are applied for by those familiar with the sector, the increasing numbers of people with no land-use or forestry background buying woodlands means that this can no longer be assumed. It was suggested that it was worth considering whether there should be a requirement for vendors to pass on information about the Regulations when they sell woodlands.

⁶⁴ The reasons behind the significant increase in applications for tree felling licences is beyond the scope of this report, however there are several influences which may account for this including (i) increased demand for wood as fuel; (ii) increased demand for timber products; (iii) encouraging environmental diversity and forest health through removal of certain trees.

NRW advises that felling licences run with the land. For all licences granted after 1 April 2024, the seller of land subject to licence should inform NRW of the name of the new owner. The buyer will then be required to complete an amendment form.⁶⁵

2 What issues/benefits do you perceive in relation to the process for obtaining felling licences? If there is scope for improvement, how could this be achieved?

The Confederation of Forest Industries (Confor) raised issues with the system for submitting Felling Licence applications. They considered this to be very poor and noted that applications cannot be easily amended once submitted if it is necessary to make corrections or clarifications. They felt that NRW placed additional requirements or conditions on the granting of a felling licence, with these becoming increasingly onerous. This meant that those seeking to fell timber were legally obliged to gain additional approvals, for example in relation to European Protected Species and water pollution, prior to the awarding of a licence. The respondent considered that gaining these approvals is not, and should not be, a condition of awarding the licence as the timescales and survey work did not make this sensible, cost effective or realistic.

Conversely, Coed Cadw expressed the view that felling licence applications are relatively straight-forward, but that a desire to keep it this way meant that there was a resistance to amending the process to ensure cross compliance with other legislation and the UK Forestry Standard.⁶⁶ They stated that the process must ensure cross compliance through the application, monitoring and enforcement of suitable conditions.

In its original evidence, NRW noted that they were able to provide a higher level of regulatory service, but this was only possible in the context of different funding models. For example, NRW could provide more hands-on help, especially for less experienced

⁶⁵ NRW *Buying and selling land with a felling licence*. Available at <https://naturalresources.wales/guidance-and-advice/environmental-topics/trees-woodlands-and-forests/buying-and-selling-land-with-a-felling-licence/?lang=en>

⁶⁶ The UK Forestry Standard is the reference standard for sustainable forest management and was last updated in 2023. Available at <https://www.gov.uk/government/publications/the-uk-forestry-standard>

applicants. They noted that this is especially effective when combined with site inspection and impartial advice at the pre-application stage. Such enhanced services however are resource intensive.⁶⁷

Under the Forestry Act 1967, NRW can consider forest management by felling under individual management interventions or in relation to a larger Forest Management Unit (FMU). According to NRW, encouraging more long-term planning by encouraging FMU applications via forest management plans (rather than lots of individual felling licences) is a progressive approach.⁶⁸ It allows woodland owners to set out their vision and objectives and to manage at an appropriate scale in relation to the sensitivities and complexities of their woodland. NRW noted that this is something they had worked with stakeholders to develop and trial but that it had been limited in effectiveness and scope due to the variability of application quality. The number and quality of applications was also limited because, unfortunately, there is no government funding to support to their development. NRW has stated that it is considering ways of updating the forest management plan (FMP) template to make it more attractive to the sector.⁶⁹

Currently NRW has no legal basis on which to recover costs for services to support better quality felling licence applications or applications via long-term forest management plans. NRW noted that they had recommended modifications to existing legislation or new legislation on the topic via various recent Welsh Government consultations. NRW noted, however, that the option to recover costs for forest regulatory services has the potential to act as a disincentive to the management of small, biodiverse woodland. Felling licence applications for such woodlands can take longer to prepare than for large-scale simpler woodlands. Increasing costs and decreasing the financial return for the management of biodiverse woodlands will not

⁶⁷ In its comments on the draft report, it notes that there has been a loss of forest regulatory staff since reorganisation in 2024 so there is less opportunity to provide this support. It also notes that any recommendation requiring a change to the current remit and responsibilities of NRW would be dependent on Welsh Government agreement. Comments received 6 August 2025.

⁶⁸ A FMP sets out the objectives of the woodland owner/occupier in terms of how they intend to manage their woodland/forest sustainably over a ten- or twenty-year period. For further information see <https://naturalresources.wales/guidance-and-advice/environmental-topics/trees-woodlands-and-forests/apply-for-a-forest-management-plan/?lang=en>.

⁶⁹ Comments on draft report received 6 August 2025.

support the delivery of nature recovery policies. NRW were of the view that taking an enabling approach to better management planning, improving the quality of applications and supporting the right level of skills, knowledge and experience were key.

NRW considered that their Forest Permitting service, which was responsible for granting felling licences, should be able to amend, suspend and revoke licences where, for example, the information provided to obtain the licence is found to be incomplete, inaccurate or deliberately misleading. This is one of the issues that has been resolved by the measures in the Agriculture (Wales) Act.

A former Forestry Commissioner noted that capacity in processing felling licence applications in a timely manner has always been an issue raised by the forestry sector⁷⁰ as has a more streamlined approach to applications for thinning. They also felt that the capacity and appetite for enforcement has not always been strong. They went on to highlight the importance of enforcement in the management and protection of trees. However, it was noted that NRW's pre-application advice service has been a positive inclusion.⁷¹

3 What is your view of Felling Licences as a mechanism for preventing the felling of trees that require protection?

The IEPAW received mixed views in response to this question. Coed Cadw expressed the view that the Forestry Act 1967 was inadequate, did not support the aims of more recent planning and environmental protection legislation and did not allow NRW to regulate forestry in a manner that is fully compatible with obligations under more recent legislation. They noted that the felling licence mechanism had been designed for the

⁷⁰ In its comment on the draft report received 6 August 2025, NRW note that there is a statutory determination period of 91 days (13 weeks) for determining felling licence applications, For further details see <https://naturalresources.wales/permits-and-permissions/permit-applications-consultations-and-decisions/our-permitting-service-levels/?lang=en>.

⁷¹ At the time, NRW provided 2 hours of free pre-application advice for felling licences but NRW has informed us that this is no longer available because of financial pressures. Comment on draft report received 6 August 2025.

regulation of forestry for timber production. Felling licences were not, therefore, appropriate for the protection of ancient woodland, trees outside woods, or trees on potential development land.

Responses supported proposals to introduce the option of civil sanctions for offences related to felling licences, provided this did not replace the option of criminal action for the most serious cases. They also noted that better outcomes may be achieved using stop notices, restocking notices and other sanctions to redress damage done, provided they are properly enforced.

With regards to felling licence conditions, Coed Cadw strongly supported proposals, now included in the amended legislation, to give NRW powers to be able to revoke or amend felling consent. They also stated that felling licences should, as a minimum, apply and monitor the requirements of the UKFS.

Coed Cadw felt that felling consent in ancient woodlands should always be subject to an approved management plan, and for veteran trees and large mature trees there should be a presumption against issuing felling consent. They also suggested that NRW should have powers to refuse or impose additional conditions in relation to ancient or veteran trees (i.e. a tree of any age exhibiting ancient characteristics) considering their high biodiversity and cultural value (measures included in the amended legislation). Where felling of such trees is licensed, consent conditions should require proportionate mitigation and compensation that reflects the value that has been lost.

Coed Cadw thought that some developers seek to exploit loopholes in the licensing process, for example, by splitting woodland into different ownerships and proceeding to work within the exceptions of felling licence limits to remove woodland prior to seeking planning consent. This consent is then granted on the basis that woodland no longer exists.

Confor was of the view that the mechanism works effectively, but that a temporary review or amendment should be considered in relation to the management of Ash Dieback.⁷²

Coed Cadw called for a review of the basis for felling licence exemptions. They considered the current measures to be complex and cited the high level of public complaint, although no substantive evidence of this was provided. They believed the current exemption regime to be extremely difficult for the public to understand and difficult for regulators to monitor or enforce. To rectify these issues, they suggested reconsidering these exemptions, including the removal or reduction of the exemption on felling up to 5 cubic metres of timber per quarter. They suggested that the felling of trees satisfying the criteria to need a felling licence should always require a felling licence. They noted that the 5 cubic metres exemption does not apply in Scotland for native broadleaved woodland between 0.1 and 0.5 ha and that in Northern Ireland private owners of woodland have been required to apply for a felling licence if they wish to fell more than 0.2 ha.

4 Are there alternative mechanisms that could be utilised?

Coed Cadw suggested replacing the volume-based exemption with a system where certain types of trees are automatically protected. They also suggested that a new approach was needed for the felling of scattered individual trees as current felling licence criteria permit substantial and repeated removal of tree cover outside of woodland.

They were also concerned that the protection of trees outside woods and of hedges provided by the then-existing farm cross-compliance mechanism should be continued in the new Sustainable Farming Scheme. NRW noted that they have been working closely with Welsh Government in their development of the Sustainable Farming Scheme.

⁷² See now <https://www.gov.wales/sites/default/files/pdf-versions/2024/10/4/1727943445/ash-dieback-policy-approach-2024-2029.pdf> and <https://naturalresources.wales/guidance-and-advice/environmental-topics/trees-woodlands-and-forests/managing-ash-dieback/?lang=en>.

NRW suggested the application of civil sanctions to all land use in Wales, including the use of fixed penalty notices, variable penalty notices, and enforcement undertakings. They considered that these would enable NRW to regulate in a more proportionate manner, noting that they are used much more extensively in England and Scotland and offer potentially huge savings over conventional regulation.

NRW also noted that there should be better guidance and advice, such as sentencing guidelines for review panels, to improve awareness and more consistent approaches to monitoring and enforcement.

Finally, NRW noted that a range of grants should be considered to incentivise woodland owners to go above the regulatory requirements. An example of this was *Better Woodlands for Wales*, which offered a wide range of capital grants for planning and defined management activities.

A former Forestry Commissioner suggested that there should be an explicit link between felling licences and the UK Forestry Standard and suggested that the ability to place a 'stop order' on felling if it is in breach of the UKFS, even on a site with felling permission, would give greater environmental protection. They noted that the Forestry and Land Management (Scotland) Act 2018 did include powers to make stop orders.

5 Are there mechanisms, that you are aware of, that are utilised in other countries in order to manage the felling of trees appropriately?

Coed Cadw suggested that Wales should adopt the provision found in section 18(5) of the Forestry Act (Northern Ireland) 2010 which enshrines into law the special value of ancient woodland:

In determining the felling management plan for any land which consists of, or includes, ancient woodland, the Department shall have regard to the desirability of maintaining the special character of that woodland.

They also noted that the Isle of Man has a system of basic protection for all trees with a stem diameter greater than 8 cm, plus a more comprehensive level of protection for 'registered trees'.⁷³

Confor noted that felling licences in Wales last for less time than in other countries of the UK (in Wales clear-felling licences last for two years compared to five years in England and Scotland). They considered that this leads to felling being carried out in a rush in Wales, resulting in poorer planning and action. On the other hand, they considered that NRW's alternative 10-year FMPs were highly complex, overly costly and only suitable for larger scale forestry.

NRW noted that the regulation of tree felling in the European Union (EU) is governed by FLEGT (Forest Law Enforcement, Governance and Trade).⁷⁴ With regards to the UK, they noted that, in Scotland, a Level 5 fine on the standard scale was a maximum of £5,000 whereas in England and Wales a Level 5 fine is unlimited. However, in Scotland the fine potentially applies to each individual tree, acting as a greater deterrent to illegal felling. Whether a specific fine for each tree felled in breach of the statutory requirements under the Forestry Act 1967 is, in practice, a greater deterrent to committing an offence is unclear. Although the courts in Wales have levied some substantial fines in recent years, these may be reduced substantially on appeal. As a result, it does not appear from the consultation responses that the scale of fines is a sufficient or effective deterrent to the illegal removal of trees.

6 In what ways are biodiversity, and in particular wildlife conservation and protection taken into consideration when felling licences are applied for and considered?

There were mixed responses to this question. Some respondents were of the view that biodiversity was not considered when applications are made for felling licences.

⁷³ Registered tree is defined under s.2(2) of the Tree Preservation Act 1993 as (a) a tree, particulars of which are entered in the register, or (b) a tree forming part of a group of trees or wood, particulars of which are so entered.

⁷⁴ Information about the approaches that countries are taking to combat illegal logging can be found in Flegt.org.

Cardiff Civic Society gave the example of the felling of a mature copper beech even though a survey had identified 22 species in the tree in a 1.5 hour period.

Coed Cadw stated that the Forestry Act 1967 did not allow conditions on biodiversity requirements to be added to felling licences. They suggested that possible felling licence conditions that could be valuable included requirements to enhance high value habitats, including specifying native trees for any restock on an ancient woodland site; mitigation of impacts on neighbouring land; and conditions that regulate downstream impacts, such as flooding. The new baseline conditions introduced following the amendments to the Act address these concerns.

The RSPB expressed similar concern that the requirement for re-stocking of felled trees does not adequately consider nature conservation requirements. They considered that the narrow scope of conditions which could be attached to felling licences could stand in the way of ambitions to maintain and enhance (or restore) the resilience of ecosystems. They were of the view that the application of felling licences should be reviewed in relation to the definition of 'woodland', the condition to re-stock, and in relation to adjacent landscape management, objectives and status.

On the other hand, other respondents stated that biodiversity was considered during the process. Confor noted that the agent/applicant will survey the woodland prior to a felling licence application and that NRW staff focus strongly on the conservation and ecological elements when they visit a property prior to issuing a licence. However, they noted that there is often a contradiction between the initial assessment and that undertaken on appeal or through the complaint process. Confor considers that this inconsistency in terms of considering biodiversity impacts of felling trees often results in difficult and lengthy cases which can take years to resolve.

NRW explained that the licensing process is undertaken in combination with Habitats Regulations Assessment (HRA), Environmental Impact Assessment (EIA) and, if applicable, Strategic Environmental Assessment (SEA.) Where protected or priority sites, habitats or species and/or features of interest are identified via an application

then NRW teams will consult internally to ensure there are no adverse effects on biodiversity or any other environmental matter.

NRW noted that it was not able to attach conditions to felling licences to ensure the integrity of protected sites, protected species or other sensitive 'environmental receptors'. Instead NRW was limited by statute to placing conditions only on the restocking of trees (and the subsequent maintenance of the restocked trees).

NRW noted that, just because a felling licence is granted, that does not constitute consent under all applicable legislation. However, there was some evidence to suggest that some applicants consider the granting of a felling licence as full consent. Species licensing and other permissions may also be required. NRW explained that it writes to applicants with its feedback so the applicant is aware and can take appropriate action including making an application via other consenting regimes. Formalising cross compliance of mutually supportive regimes is needed to ensure an efficient process.

NRW were of the view that it was necessary to extend their powers to be able to attach environmental conditions to felling licences to ensure they are fully compliant with all relevant legislation, including their legal duty under the Environment (Wales) Act 2016 on sustainable management of natural resources (SMNR).

3.6 IEPAW Conclusions on Felling Licences

The evidence suggests that the felling licence application process is generally accepted and well understood. The fact that the felling licence might not be the only authorisation required was not so clear, however. Some people did not realise that there might be a need to apply for other authorisations; others questioned the need to do so.

The licence exemptions provided for under the Forestry Act 1967 are overly complex, however, and allow a significant amount of tree felling to occur without the need to apply for a licence.

It is not clear how much felling occurs in practice. There are concerns that landowners may be going beyond the amount they can fell under exemptions or under the terms of their licence(s). Without a way of accurately monitoring the amount of felling that is occurring in practice, it is impossible for the regulator to properly assess whether the current licensing arrangements are fit for purpose and whether they are effectively protecting our trees and woodlands.

At present, felling activity is measured by volume. This approach does not consider the carbon sequestration capacity of trees where mature trees are able to capture greater volumes of carbon. There are also significant incidents of alleged illegal felling in Wales.⁷⁵

We very much welcome the changes to legislation introduced by the Agriculture (Wales) Act 2023. These go some way towards meeting the concerns raised by NRW and others over the lack of flexibility in the system. The addition of conservation needs as a further reason for making a licence conditional is very welcome but may not go far enough.

The IEPAW strongly endorses the measures and associated guidance that NRW has developed in respect of environmental conditions.⁷⁶ There are three tiers of conditions. Baseline conditions are standard conditions in line with the UKFS. They include, for example, a requirement to identify, retain, manage and avoid damaging veteran trees. These are automatically applied to all felling licences. Tier Two conditions may be attached to a licence where there is a potential to impact on sensitive areas and/or protected species including ancient woodland, red squirrels and water voles. Bespoke

⁷⁵ NRW state that there were 451 reports in 2023-24; comments on draft report received 6 August 2025.

⁷⁶ *Tree Felling Licence: Environmental Conditions*. Available at <https://naturalresources.wales/guidance-and-advice/environmental-topics/trees-woodlands-and-forests/tree-felling-licence-environmental-conditions/?lang=en> and *Felling Licences: Guidance for Felling Licence Applicants: Environmental Conditioning on Felling Licences*. Available at <https://cdn.cyfoethnaturiol.cymru/a1dbxp0b/guidance-for-applicants-and-licence-holders-convert-eng.pdf>.

conditions may also be included where there are multiple sensitive areas on a site. They are determined on a site-by-site basis. Both Tier two and bespoke conditions are determined following consultation with the applicant.

We are concerned, however, that failure to comply with a licence condition is not an offence. If an environmental condition is not complied with, NRW's only course of action is to serve a notice amending, suspending or revoking the licence.⁷⁷ We agree with NRW that this may not be a sufficient remedy, for example, where the condition was to retain something which has actually been felled or disturbed. By this time, the environmental harm has already occurred with no potential to prosecute or otherwise penalise the landowner or operator.⁷⁸

We agree with NRW that the legislation on restocking notices in Wales should be brought in line with that applying in England. Failure to comply with an enforcement notice requiring compliance with a licence condition is an offence. In England, where the condition relates to restocking, the court is also able to make a restocking order. According to NRW, this process is working well.⁷⁹ The Agriculture (Wales) Act did not, however, provide for the Forestry Act to be amended to provide similar provisions for Wales. There have been significant illegal felling prosecutions in Wales where land has not been restocked following non-compliance with an enforcement notice.⁸⁰

The management of ancient woodlands may require some trees to be felled, for example for thinning purposes. We agree with Coed Cadw that felling consent in ancient woodlands should always be subject to an approved management plan and that there should be a presumption against giving felling consent for veteran and large mature trees in these woods.

⁷⁷ Forestry Act s 24C.

⁷⁸ Comments on draft report received 6 August 2025.

⁷⁹ Ibid

⁸⁰ For further information see [https://naturalresources.wales/about-us/news-and-blogs/news/illegal-tree-felling-crackdown-nrw-secures-three-major-prosecutions/?lang=en#:~:text=Natural%20Resources%20Wales%20\(NRW\)%20has,Wales'%20forests%20and%20ancient%20woodlands](https://naturalresources.wales/about-us/news-and-blogs/news/illegal-tree-felling-crackdown-nrw-secures-three-major-prosecutions/?lang=en#:~:text=Natural%20Resources%20Wales%20(NRW)%20has,Wales'%20forests%20and%20ancient%20woodlands).

It is important that NRW is adequately resourced to carry out its licensing functions so there is value in considering the introduction of a charging mechanism to offset the costs associated with increased processing and granting applications for felling licences. The introduction of any such scheme would need to be balanced against the need to ensure that landowners are not unduly dis-incentivised from applying for a licence. The IEPAW believes the advantages of a charging mechanism would outweigh any potential disadvantages. It is unclear whether the NRW currently has the necessary powers to make charges; if necessary, the law should be amended to provide for this.⁸¹

The IEPAW does not think that the importance of trees to Wales is sufficiently reflected in the penalties available for offences. For example, the characteristics of each tree illegally felled should be considered in determining fines. We also agree that the option of imposing civil sanctions could be a more efficient cost-effective enforcement mechanism.

⁸¹ IEPAW understands that NRW has sought legal advice on the whether it has these powers under the Natural Resources Body for Wales (Establishment) Order 2012. SI 2012/ 1903, W 230. Article 13A states that NRW must spend all sums received in respect of the sale or other disposal of timber or other forest products on the exercise of its functions relating to forestry, forests, woods and woodland industries.

3.7 Recommendations on Felling Licences

Recommendation 1: NRW and Local Authorities should, as soon as possible, introduce and implement a better monitoring programme utilising the best available technology to accurately record felling of trees in Wales. It is suggested that this should be instigated by the Welsh Government and implemented across Wales.

Recommendation 2: The Welsh Government in the next Senedd term should legislate to amend the Forestry Act to make it an offence to fail to comply with an environmental condition.

Recommendation 3: The Welsh Government in the next Senedd term should legislate to amend the Forestry Act to enable the court to make a restocking order.

Recommendation 4: The Welsh Government in the next Senedd term should introduce a presumption in law against granting felling licences for veteran and large mature trees in ancient woodlands.

Recommendation 5: The Welsh Government, within one year of the publication of this report, should ensure that NRW has the necessary powers to enable it to charge for felling licence applications subject to consultation.

Recommendation 6: NRW should develop a plan for charging for felling licences, once it is confirmed that it has the necessary powers to do so.

Recommendation 7: The Welsh Government, in the next Senedd term, should consider introducing civil sanctions in relation to the unlawful felling of trees.

Recommendation 8: The Welsh Government, in the next Senedd term, should legislate to ensure that where criminal penalties are used, they should be applied for individual trees felled rather than in relation to groups of trees.

4 Tree Preservation Orders (TPOs)

4.1 Legal Framework for TPOs

Provision for the protection of trees of amenity value has been included in planning legislation since 1932. Tree Preservation Orders (TPOs) were first introduced in 1943⁸² and have been retained in more or less the same form in all subsequent planning Acts. The purpose of a TPO is to ensure that unauthorised felling of, or serious damage to, trees protected by a TPO does not occur.

The current provisions are in the TCPA s.198 which provides:

- (1) If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.
- (2) An order under subsection (1) is in this Act referred to as a “tree preservation order.”

A TPO comes into effect only once it has been confirmed, except where it is made on a provisional basis which provides protection for a maximum of six months or until the order is officially accepted if earlier.⁸³ In practice most orders have been made on the latter basis.⁸⁴ A Schedule to the Regulations made under the Act sets out a model form for a TPO.⁸⁵ Each TPO specifies the procedure for applying for consent to carry out any action prohibited by the TPO along with details of the entitlement to compensation if consent is refused or given subject to onerous conditions.

⁸² Town and Country (Interim Development) Act 1943 s. 8.

⁸³ TCPA 1990 s. 201(1) provides for provisional TPOs.

⁸⁴ As stated in *Preserving Trees and Woodlands: New Regulations* Welsh Government 15 November 2024 at para. 3.6. Available at <https://www.gov.wales/preserving-trees-and-woodlands-new-regulations>

⁸⁵ Town and Country Planning (Trees) Regulations 1999 SI 1999/1892.

4.1.1 Amenity

There is no definition of amenity within the Act, however the Helliwell System⁸⁶ has been used in court cases, insurance claims and public inquiries to place a visual amenity value on trees and woodland. This system scores trees against seven categories including setting, size, life expectancy, position, and special factors. More recently the London Tree Officers Association has adopted Chris Neilan's Capital Asset Value for Amenity Trees (CAVAT).⁸⁷

Notwithstanding the two systems which attempt to determine a monetary value for a tree or woodland, the lack of a clear definition of what constitutes 'amenity value' results in authorities exercising judgment when deciding whether it is within their powers to make a TPO. The Department for Environment, Food and Rural Affairs (Defra) suggests that factors in assessing amenity will include visibility and the public impact of removal.⁸⁸ Development Control and Practice (DCP) (2023) recognises the multitude of amenity benefits provided by trees namely:

*'in civic design terms they create gateways, avenues, screens, or visual foci. In relation to buildings, trees are often important foils, with broad-leaved species in particular offering a cherished seasonal dynamic in urban situations where natural forms are otherwise missing. Trees are also vital to the ecology of an area.'*⁸⁹

Planning & Environment Decisions Wales (PEDW)⁹⁰ states that local planning authorities (LPAs) considering the need for a TPO should assess:

⁸⁶ The Helliwell system is a method by which a monetary value is placed on trees/woodland.

⁸⁷ CAVAT was used in respect of the Sycamore Gap and Enfield Oak cases; neither of these trees was protected by a TPO.

⁸⁸ Defra 2020 *England Tree Strategy Consultation* at p. 21.

⁸⁹ DCP Online 2023 *Chapter 29: Tree and Hedge Preservation*, at para. 29.13.

⁹⁰ PEDW *Tree Preservation Orders and Trees*

<https://www.gov.wales/sites/default/files/publications/2023-03/atish17121doc15.pdf>

Visibility: *the extent to which trees ... can be seen by the public. ... The tree(s) should normally be visible from a public place, such as a road or footpath, or accessible by the public.*

Individual, collective and wider impact: *Public visibility alone will not be sufficient. ... the particular importance of an individual tree, or group of trees, or of woodland [should be assessed] by reference to ... characteristics including size and form; future potential use as an amenity; rarity; cultural or historical value; contribution to or relationship with, the landscape; and contribution to the character or appearance of a Conservation Area.*

Other factors: *where relevant ... [LPAs] may consider taking into account other factors such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.*

4.1.2 Prohibited Activities

The Act contains a list of prohibited actions which cannot be carried out without permission but also provides for exceptions from the need to apply for consent.

Under s. 210(1) it is an offence without the LPA's consent, to

- a) cut down, uproot or wilfully destroy a protected tree; or
- b) damage, top or lop it wilfully in such a manner as to be likely to destroy it.

A person found guilty of an offence is liable to a fine on summary conviction or indictment. In determining the amount of a fine, the court must have regard to any financial benefit which has accrued or appears likely to accrue to the guilty party.⁹¹ It is also an offence to carry out other works without consent.⁹²

⁹¹ TCPA 1990 s. 210(3).

⁹² Ibid, s. 210(4). This offence carries a fine not exceeding level 4 on summary conviction.

The case of *Swansea City Council v Enzo Homes Ltd*⁹³ demonstrates the challenges faced when attempting to enforce TPOs. Although the developer initially faced substantial fines, these were reduced on appeal.

Case Study: Enzo Homes

In October 2019, a property developer, and his firm, Enzo Homes Ltd, were fined by Swansea Magistrates Court £180,000 and £120,000 plus costs respectively for wilfully destroying a 176-year-old 27 m giant redwood tree and a further 72 trees in ancient woodland.⁹⁴ The tree contractor who carried out the felling, pleaded guilty to contravening the TPO, and was fined £120,000 plus costs.⁹⁵ TPOs were in place for all the trees felled at the site in Penllergaer, Swansea, in November 2018.⁹⁶ The Court heard the redwood tree was worth about £66,000 but in reality was "irreplaceable". Central to the determination as to whether an offence had been committed by the defendants was whether there was an intention on the part of the defendants to fell the trees with TPOs. In concluding the matter, the District Judge reasoned *"[i]t is inconceivable on this evidence the felling of this tree and the ancient woodland was done in any other way than deliberately. There would have been discussions about how it was to be done, permission obtained to remove the fence and any other preparatory work"*.⁹⁷

⁹³ *Swansea City Council v Enzo Homes Ltd* (2021). See also BBC News 17th September 2021 *Developer cleared of deliberately chopping trees in Swansea*. Available at: <https://www.bbc.co.uk/news/uk-wales-58601981>.

⁹⁴ It should be noted that the categorisation of ancient woodland does not in itself provide any statutory protection.

⁹⁵ *City and County of Swansea v Enzo homes limited, Mr Sauro and Arwyn Morgan*. Swansea Magistrates Court, 24th September 2014.

⁹⁶ Planning permission had been granted on 30 May 2018 for the construction of 80 residential units at the site. A condition attached to Decision Notice 2017/0986/FUL required Enzo Homes Ltd to submit to the LPA a scheme for tree protection.

⁹⁷ BBC News 15th October 2019 *Illegal Tree Felling: Fiorenzo Sauro and Enzo Homes Fined £300k*. Available at: <https://www.bbc.co.uk/news/uk-wales-50061303>. See also BBC News June 2021 *Claims ancient Swansea tree was chopped down for profit dubbed 'bizarre'*. Available at: <https://www.bbc.co.uk/news/uk-wales-57499595>.

Enzo Homes Ltd and the tree surgeon contracted to undertake the works appealed against their conviction and the level of fine. The appeal was heard at Swansea Crown in January 2021. The Crown Court judge concluded that, regarding uprooting or wilfully destroying trees benefitting from TPOs the appellants were guilty under section 331 (Offences by Corporations) of neglect relating to the felling of the redwood. However, in relation to the 72 trees in the ancient woodland, the court found it impossible to conclude with any level of certainty that Enzo Homes Ltd had instructed the tree surgeon to fell the 72 trees. Judge Clee dismissed the appeal associated with the charge against each appellant in relation to the destruction of the redwood but upheld the appeal against the charge relating to the other 72 trees.⁹⁸ Following the appeal, the fine for the property developer and his firm Enzo Homes Ltd, was reduced to £50,000 and £50,000 respectively plus costs.

In considering the level of fine imposed at first instance for the tree surgeon, the judge found there to be a requirement on the party to have consulted the TPOs prior to beginning felling work. Consequently, the destruction of the trees was not because of a mistake, but due to negligence.⁹⁹ Turning to the level of fine, the court paid regard to whether there was a financial advantage to felling the trees. No such advantage was considered to have resulted and the original fine imposed by the magistrate's court was viewed as inappropriate. The appeal against the level of fine was therefore allowed. Considering the contractor's income, the judge fined him £4,000 and said the original costs against him would stand.

⁹⁸ *Swansea City Council v Enzo Homes Ltd* (2021).

⁹⁹ Evans, J. 17/09/2021 *House-builders Enzo's Homes lose appeal against conviction for felling historic Redwood Tree at Penllergare Valley Woods*. Wales Online at: <https://www.walesonline.co.uk/news/wales-news/enzos-homes-penllergaer-pontlliw-tree-21597085>.

4.1.3 Exceptions

The LPA's consent is required for carrying out of works on a tree protected under a TPO, subject to exceptions – some specified in the Act (sections 198(6), (7) and 200), and some in the relevant TPO. These exceptions include:

- cutting down or cutting back a tree which is dying, dead, or dangerous;
- in line with an obligation under an Act of Parliament;
- at the request of certain organisations specified in the TPO;
- the tree(s) are directly in the way of development that is about to start for which detailed planning permission has been granted;
- in a commercial orchard, or pruning fruit trees in accordance with good horticultural practice;
- to prevent or control a legal nuisance;
- the tree(s) are being cut in accordance with an NRW grant scheme or where NRW have granted a felling licence.

4.1.4 Conservation Areas

Conservation Areas, defined as areas of particular historical, social or architectural interest are designated under the Planning (Listed Buildings and Conservation Areas) Act 1990. Special rules apply to trees in a Conservation Area that are not already protected by a TPO. In these cases written notice needs to be given to the LPA of any proposed work at least six weeks before the work starts. This gives the LPA an opportunity to consider protecting the tree from the impact of the proposed works. It is not necessary to give notice of work on a tree in a conservation area where the tree has a diameter less than 7.5 centimetres measured 1.5 metres above the ground (or 10 centimetres if thinning to help the growth of other trees).

4.1.5 Guidance

Guidance on TPOs for LPAs is provided in the form of a Technical Advice Note (TAN)¹⁰⁰ and there is also guidance for the public.¹⁰¹

The public guidance explains the impact of TPOs on planning permission being granted:

*A tree preservation order does not prevent planning permission being granted. But a local planning authority will consider the risk to protected trees when deciding planning applications. Once detailed planning permission is granted, any felling may be carried out which is directly required to enable the development to go ahead.*¹⁰²

Where trees that will be affected by a proposed development are subject to a TPO, the guidance is clear that this would constitute a material consideration in the appraisal of the planning application.

LPAs can provide further supplementary planning guidance (SPG) for officers within their own authority's boundaries. Several LPAs have done this, for example, Cardiff Council's SPG on woodlands and hedgerows,¹⁰³ Swansea Council's preservation and enforcement action protocol¹⁰⁴ and Wrexham Council's guidance note on trees and development.¹⁰⁵

¹⁰⁰ TAN 10 *Tree Preservation Orders* October 1997. Available at <https://www.gov.wales/technical-advice-note-tan-10-tree-preservation-orders>.

¹⁰¹ *Protected Trees: a Guide to Tree Preservation Procedures* 2013. Available at <https://www.gov.wales/sites/default/files/publications/2018-09/protected-trees-a-guide-to-tree-preservation-procedures.pdf>.

¹⁰² Ibid, at para. 23.

¹⁰³ Cardiff Council: Supplementary Planning Guidance (SPG) *Trees and Development on how the Council assesses development proposals that might affect trees, woodlands and hedgerows*.

¹⁰⁴ Swansea Council: *Protected Tree Protocol*. This aims to ensure trees are preserved, including consideration of TPOs, tree work applications and enforcement action to prevent or deter unauthorised work.

¹⁰⁵ Wrexham Council: [Local Planning Guidance Note No 17 - Trees and Development](#).

4.2 TPOs in Wales

As the application process and management of TPOs is handled by local authorities individually, there are no 'pan-Wales' data on the number of applications made for TPOs or the number of TPOs issued, amended or revoked. Furthermore, where data on TPO numbers and location are publicly available online, the age of the data differs from local authority to local authority.

A desk-based review of all local authority webpages on TPOs indicated that only a minority of local authorities (6/25) provided online or interactive maps showing the locations of all TPOs (and often also Conservation Areas). Typically, these local authorities also provided more detailed advice about TPOs and the process of designation as well as doing works to a tree with a TPO or in a Conservation Area. However, there was no consistency in the level of information on TPOs provided by most local authorities (19/25). In general, local authorities advised residents to contact their local planning office or dedicated Tree Officer to enquire about local TPOs. Out of 25 local authorities, 14 referred to external documents, guidance and law relating to TPOs and only four signposted the SPG for trees and woodlands on their TPO webpage.

4.3 Evidence on TPOs

4.3.1 Questions posed to Stakeholders

Stakeholders were asked the following questions.

1. Do you think that the process of applying TPOs across Wales is clear, transparent and accessible?
2. What is your view of TPOs as a mechanism for preventing the unlawful felling of trees that require protection?
3. What are your views in relation to the way TPOs are enforced? What practical difficulties arise? If it is perceived improvements could be made, how could the monitoring and enforcement be improved?
4. Do you think there is consistency of approach across local authorities in Wales as to the enforcement of TPOs? Give examples.

5. Are there alternative mechanisms that could be utilised?
6. Are there mechanisms, that you are aware of, that are utilised in other countries in order to prevent unlawful felling of trees?
7. In what ways are biodiversity, and in particular wildlife conservation and protection taken into consideration when TPOs are made and also in the way that they are monitored and enforced?

1 Do you think that the process of applying TPOs across Wales is clear, transparent and accessible?

The responses to this question were mixed. Although some respondents considered the process to be clear, transparent and accessible, others disagreed. It was noted by some respondents that although the legislation governing TPOs is consistent across Wales the exact process of applying for TPOs in Wales differs between LPAs. LPAs have, over time, developed their own processes and procedures to designate TPOs and to monitor and enforce against breaches of TPOs. Some respondents to the consultation expressed concern about these differences and the lack of consistent information and data being collected and available for public inspection on TPOs across Wales.

Some respondents stated that information leaflets on TPOs available from the Welsh Government were outdated and not sufficiently clear. For example, it was noted that the Welsh Government protected trees guidance assumes that people can visualise and/or measure trees and cubic metres of timber.

A representative at Cardiff Council¹⁰⁶ noted that a useful guide could be found in *Trees in Cardiff: A Householder's Guide*¹⁰⁷ which set out in written as well as diagrammatic format information in relation to trees, from tree health and how to care for them through to legal issues. Section 4 of the guide talked about protected trees, what

¹⁰⁶ Point raised at an IEPAW stakeholder meeting.

¹⁰⁷ Cardiff City Council (2014) *Trees in Cardiff, A Householder's Guide*. This document is no longer available online.

precautions people should take to avoid disturbing wildlife in trees and the interaction with wildlife legislation.

NRW stated that their role in assigning TPOs was not always clearly explained in policy documentation. They noted, for example that while *Protected Trees – a Guide to Tree Preservation Procedures* made specific reference to the need to obtain NRW's permission before a TPO is made in respect of a tree where grant aid has been given under a Welsh Government forestry grant scheme, Planning Policy Wales (PPW) (Edition 11) does not mention NRW's role.¹⁰⁸

2 What is your view of TPOs as a mechanism for preventing the unlawful felling of trees that require protection?

Generally, respondents considered that TPOs were of limited value as a mechanism for preventing the unlawful felling of trees and were only effective if rigorously enforced with punitive fines for non-compliance.

Coed Cadw expressed the view that TPOs were a reactive mechanism that was usually only applied when a threat is imminent. They suggested that this means that not all valued trees have protection and that such protection relies mainly on local communities highlighting imminent risk. This, Coed Cadw argued, results in a knee jerk and haphazard system of tree protection that varies between LPAs. Cardiff County Council suggested that the more guidance and detail that is provided the more likely the works will be carried out in an appropriate manner.¹⁰⁹ A former Forestry Commissioner commented that the system seems to rely on someone reporting a tree being felled or damaged rather than any form of regular monitoring. They recognised that undertaking such monitoring would be potentially heavy on resources but thought that there might be opportunities using remote sensing.

NRW noted that fines for felling TPO trees were often very low. They cited a conviction in December 2019 where the felling of 40 TPO trees in Leatherhead resulted in a fine

¹⁰⁸ The same is true in the latest version of PPW.

¹⁰⁹ Point raised by Cardiff County Council at a stakeholder event, October 2021.

of £3,000 plus costs. However, they also pointed to the Enzo Homes case (discussed above) where an LPA made use of the Proceeds of Crime Act 2002 in prosecuting a property developer and tree contractor who felled TPO trees in Swansea. According to NRW, there have been similar results in England, with a £40,000 fine for felling a single TPO tree in Poole, Dorset, and a £60,000 fine for felling a 100-year-old cedar in Chelmsford, Essex. NRW noted, though, that it was common for such high fines to be reduced on appeal, as seen in the Enzo case.

Coed Cadw also noted that, at present, TPOs can be applied where it appears to the LPA that it is 'expedient' to protect a tree or woodland 'in the interests of amenity'. In their view, the test of 'expediency' should be removed from legislation and the definition of 'amenity' should be clarified with a more definite meaning to aid application and use by LPAs. They considered that trees or woodland should be protected if they are considered to be of 'sufficient value to society'. They suggested that TPOs should be made to protect trees specified individually or by reference to an area, groups of trees or woodland.

Another issue raised by several respondents was a lack of public and landowner awareness of TPOs and a lack of knowledge of what a TPO does or does not allow. NRW noted that, if there is a poor understanding of what TPOs mean in practice, then it is unlikely to be a reliable mechanism to prevent the unlawful felling of TPO protected trees. As the law stands in Wales, this would result in the inability to prosecute as intent must be established.

Under the Forestry Act,¹¹⁰ NRW has to notify the relevant local authority if it intends to grant a felling licence for a tree protected by a TPO. In their comments on this report, NRW has noted that it can be difficult for NRW to determine if a tree has a TPO. An owner has to inform NRW if there is a TPO in place and this does not always happen either because the owner is unaware of it or chooses not to pass this information on.¹¹¹

¹¹⁰ Forestry Act s 15(10(a)).

¹¹¹ Comments received 6 August 2025.

3 What are your views in relation to the way TPOs are enforced? What practical difficulties arise? If it is perceived improvements could be made, how could the monitoring and enforcement be improved?

Respondents agreed that local authorities were not adequately resourced to ensure that TPOs were properly enforced. A lack of dedicated local authority Tree Officers was noted in the responses. Coed Cadw noted that there had been a significant decline in tree expertise in local authorities.¹¹² Cardiff Civic Society claimed that council manpower was so diminished in Cardiff that no new TPOs had been issued for a long time. NRW also expressed the view that variability in the employment, skills and experience of Tree Officers and local tree champions between local authorities was a factor in the quality and consistency of the work done to both issue new TPOs and prevent unlawful felling. NRW also noted that local authorities have the power to enforce the restocking of TPO trees felled without a licence. However, successful replacement requires considerable tracking and perseverance, which can be difficult if local authorities are under-resourced. As mentioned above, many respondents were of the view that fines were too low and so failed to act as a deterrent.

Coed Cadw noted that they supported the Law Commission's recommendation for tightening up the TPO exemption for works to trees which are dead, dying or dangerous.¹¹³ On the other hand, they supported the Welsh Government's rejection of the Law Commission's recommendation to introduce a new exemption for works on trees smaller than a specified size.¹¹⁴

4 Do you think there is consistency of approach across local authorities in Wales as to the enforcement of TPOs? Give examples.

There was general agreement among respondents that the enforcement of TPOs was not consistent across local authorities in Wales. Both Coed Cadw and NRW noted that some LPAs provided interactive maps showing where TPOs apply whereas others did

¹¹² They cited Davies et al (2017) 'Challenges for tree officers to enhance the provision of regulating ecosystem services from urban forests.' Environmental Research 156, 97-107.

¹¹³ See Note 33 above.

¹¹⁴ See <https://www.gov.wales/detailed-response-law-commission-report-planning-law-wales> .

not. In the absence of these tools, developers and landowners may be able to argue that they had no way of knowing the status of felled trees.

It was suggested that breaches of TPOs, including deliberately cutting trees subject to such Orders, are rare.¹¹⁵ Consequently the concentration of the legislation on enforcement and legal powers in the event of damage or destruction to trees is disproportionately weighted. Instead, it was suggested that greater attention in law should be given to promoting and/or ensuring good tree management. It was argued proactive tree management is the best way to achieve the outcomes and aims desired by the legislation as opposed to concentrating on prosecutions. For this reason, detailed conditions on the consents granted for work on protected trees are vitally important.

NRW considered that there was significant room for improvement in the pre-application advice and guidance available on TPOs for developers at the planning stages of projects. They suggested there was the potential to better link the information available from membership bodies for the provision of accredited professional services such as the Arboricultural Association. They suggested that there may be a role for the Welsh Local Government Association to support consistency of approach and effective levels of skills, knowledge and experience across local authorities.

5 Are there alternative mechanisms that could be utilised?

Coed Cadw expressed the view that a more proactive approach would be preferable. They noted that the planning guidance in PPW (Edition 11) provided for a better approach, suggesting that local authorities should prepare tree and woodland strategies. They offered an example of this approach adopted by Wrexham Council.¹¹⁶ The Council's strategy sets out in detail how the Council wishes to apply TPOs.

¹¹⁵ Point raised by Cardiff County Council at a stakeholder event, October 2021.

¹¹⁶ Wrexham Council (2023) *Woodland Pledge*. Available at: <https://www.wrexham.gov.uk/service/wrexham-woodland-pledge/tree-and-woodland-pledge#:~:text=The%20aim%20of%20our%20Tree,and%20visit%20Wrexham%20County%20Borough.>

Coed Cadw also suggested that TPOs should be placed on all of the most ‘important’ trees, for example ancient trees recorded in the ATI.¹¹⁷ Furthermore, they suggested that an additional new designation should be considered specifically for uniquely valuable and irreplaceable trees which by age, size, character, rarity, or associations with historic events or people are of national special interest. Finally, they suggested that legally binding statutory management agreements should be introduced, along the lines of Heritage Partnership Agreements, used for historic parks and gardens.

Confor noted that, given the age of the legislation, it would be sensible to review its current success rate and consider what steps could be taken to modernise it. For example, consideration should be given to better digitisation of notifications, approvals, applications in relation to TPO trees; fines based on the actual damages; and effective long-term reparation to dis-incentivise unauthorised felling. They also suggested that a national TPO map shared through DATA MAP Wales and hosted by NRW would be useful.

6 Are there mechanisms, that you are aware of, that are utilised in other countries in order to prevent unlawful felling of trees?

Coed Cadw pointed to the concepts of ‘registered trees’ and ‘regulated trees’ used in Australia.¹¹⁸ Registered trees are trees that have been registered on the basis of their natural or cultural heritage, landscape and aesthetic or scientific value. These trees cannot be removed for development and registration can only be cancelled in very limited circumstances. For regulated trees permission is required for works on any tree that meets certain dimensions.

NRW pointed to the requirement in the EU Timber Regulation¹¹⁹ for Member States to have mechanisms in place to prevent the unlawful felling of trees.

¹¹⁷ Woodland Trust (2023) *Ancient Tree Inventory*. Available at: <https://ati.woodlandtrust.org.uk/> .

¹¹⁸ *Discussion Paper: Review of the Tree Protection Act 2005*. Ministry of City Services Directorate: Canberra. Available at: https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.act-yoursay.files/4015/7180/8771/191316_TCCS_Review_Tree_Protection_Act_Discussion_Paper_v10.pdf .

¹¹⁹ Forest Law Enforcement, Governance and Trade Regulations 2012 No.178. This is EU retained law following the European Union (Withdrawal) Act 2018.

7 In what ways are biodiversity, and in particular wildlife conservation and protection taken into consideration when TPOs are made and also in the way that they are monitored and enforced?

Respondents were generally in agreement that guidance on TPOs did not include reference to biodiversity or wildlife conservation and protection. Several respondents noted that this was a notable omission. NRW pointed to the need to update *Protected Trees – a Guide to Tree Preservation Procedures*.¹²⁰ It does not contain any reference to biodiversity nor to the need to be aware of possible further licensing requirements.

Coed Cadw considered that it was important to enact the Law Commission's recommendation on clarifying the definition of 'amenity' in relation to TPOs.¹²¹ The Law Commission recommended that 'amenity' should include appearance, age, rarity, biodiversity and historic, scientific and recreational value and that TPO regulations should prescribe matters considered to be relevant to this wider definition of amenity.

4.4 Proposed Legislative Changes

4.4.1 The Need for Change

As noted in the evidence, there are a number of problems with the current legal framework for TPOs in Wales including the following:

- Orders tend to be lengthy and difficult to understand;
- exceptions to the need for consent are set out in different pieces of legislation;
- some of the exceptions may no longer be appropriate;
- changes to the Regulations introduced after the making of an Order do not affect that Order.

The Planning Act 2008 amended the provisions for TPOs in the TCPA 1990 to provide for a simpler procedure for TPOs.¹²² Under the new legislation, TPOs now take effect immediately but need to be confirmed within six months, thereby removing the need

¹²⁰ See Note 101 above.

¹²¹ See Note 33 above.

¹²² Section 202A-G were added to the Act.

for provisional orders. Regulations can be made under powers in sections 202A-G of the amended TCPA to prescribe:

- procedures for making a TPO;
- exceptions to the need for consent to carry out works; and
- procedures for obtaining consent.

The new system came into force in England in 2012 but has not yet been brought into force in Wales. In England, the Town and Country Planning (Tree Preservation) (England) Regulations 2012 were made following a UK Government consultation in 2010 which examined the opportunities for consolidating the legal provisions into one set of regulations. In addition, the consultation also proposed revisions to the system to make it more streamlined, fairer and easier for tree owners to use.¹²³

4.4.2 The Law Commission Report

The Law Commission's 2018 report on Planning Law in Wales¹²⁴ included consideration of TPOs. It made several recommendations including the following.

- 'Amenity' should be defined to include appearance, age, rarity, biodiversity and historic, scientific and recreational value.
- Provisions for TPOs should enable them to be made to protect individual trees, groups of trees or areas of trees. Group or area orders should only protect trees in existence at the time the order was made. A new area order should provide protection only until it is confirmed at which point it would be converted into an order specifying the trees to be protected. A Woodland Preservation Order should be introduced to protect woodlands. This could protect all trees within the specified woodland whether or not they were in existence at the date of the order.

¹²³ For a summary of the changes see Annett, P. (May 2012) *A Summary of the Revised Tree Preservation Order Legislation*. The Arboricultural Association: Gloucester. Available online at: <https://files.cambridge.gov.uk/public/ldf/coredocs/A%20Summary%20of%20the%20Revised%20Tree%20Preservation%20Order%20Legislation%202012.pdf>.

¹²⁴ See Note 33 above.

- TPOs should be notified to relevant owners and occupiers not least because breach of a TPO is a strict liability offence.
- The exemption from the need for consent for works to a protected tree that is dying or dead or has become dangerous should be restricted to situations where works are ‘urgently necessary to remove an immediate risk of serious harm’.
- The exemption from the need for consent for works ‘necessary to prevent or abate a nuisance’ should be removed.
- There should be a new exemption from the need for consent to allow the carrying out of works to a tree protected under a Woodland Preservation Order smaller than a specified size where the purpose is for improving the growth of other trees.
- It should be considered sufficient that a replacement tree, to be planted as a substitute for a protected tree that has been felled unlawfully or removed because it is dead or has become dangerous, be planted at or near the location of the tree being replaced – rather than, as at present, at precisely the same location.
- The LPA should be given powers to recover any expenses incurred in making and enforcing Tree Replacement Orders.
- The scope of the offence under section 210(1) of the TCPA 1990 should be amended to include ‘intentional or reckless’ destruction or damage.
- The offences under section 210(1) and 210(4) of the TCPA 1990 should be replaced with a single offence triable either way, punishable on conviction with a fine of any amount.
- Where trees are in Conservation Areas it is suggested that the planning authority be given the power to allow the works to the tree in the Conservation Area subject to conditions being applied or a TPO being imposed.

4.4.3 The Proposed New Regulations

The Welsh Government intends to legislate in this term to bring the changes introduced by the Planning Act 2008 into force. In November 2024 it issued a consultation paper on its proposals to amend the regulations on TPOs. It is proposed that the changes will be made in the forthcoming Planning (Wales) Bill which will include provisions for new Planning (Wales) (Tree Preservation) Regulations to be

made. It is expected that these will come into force at the same time as the Act. The proposed new regulations have been drawn up in the light of the recommendations made by the Law Commission as outlined in section 4.4.2 above. The consultation closed in February 2025, and the new measures are included in the draft Planning (Wales) Bill published in June 2025.¹²⁵

There will be two forms of protection order. Individual trees, groups of trees and areas of trees will be protected under TPOs whereas woodlands will be protected under Woodland Preservation Orders (WPOs). Model forms for each are set out in annexes to the consultation document.

The consultation document sets out the proposed changes to the regulations and explains the reasons for these. Key changes of particular importance for the protection of trees are set out below.

4.4.3.1 Amenity

The Welsh Government recognises that views on the meaning of ‘amenity’ have changed over the years and that it is no longer appropriate just to consider visual aspects. Accordingly, it is proposed that the Regulations should specify the factors to be taken into account. These are:

- a) age and rarity;
- b) appearance;
- c) contribution to biodiversity; and
- d) historic, scientific and recreational value.

4.4.3.2 Exceptions

It is intended that the new Regulations will include the full list of exceptions identified in classes so that they will all be in the same place for the first time. It is not proposed simply to consolidate the measures, however, and some changes are proposed.

¹²⁵ Available at <https://www.gov.wales/draft-planning-wales-bill>.

The exception relating to dead, dying and dangerous trees is to be restricted. The Welsh Government recognises that it can be difficult to determine when a tree is dying or when it has become dangerous. Also, it is not clear how much work can be carried out without consent. Furthermore, even if a tree is dead, this does not necessarily mean that it is of no value, for example as a wildlife habitat. The following exceptions are therefore proposed:

Class A Removal of dead branches from a living tree

Class B 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.

The other major change is the proposal to remove the exception for works ‘necessary for the prevention or abatement of a nuisance’. The Welsh Government considers that it should be for the local authority to decide whether action is needed on a case-by-case basis.

4.5 IEPAW Conclusions on TPOs

The Law Commission addressed many of the concerns raised in the evidence and the proposed new regulations will put these onto a statutory footing. We welcome these developments. These should ensure greater consistency across local authorities in Wales and make TPOs easier to understand. It will be important, however, to update both TAN 10 and *Protected Trees: a Guide to Tree Preservation Procedures* to take account of the new procedures and to include references to the duties to maintain and enhance biodiversity as set out in the Environment (Wales) Act s. 6.

There are other concerns, as well, not least the capacity of local authorities to make full use of their powers regarding TPOs.¹²⁶ We believe that there should be dedicated

¹²⁶ Note, for example, that the Enfield Oak that was felled in April 2025 was not protected by a TPO despite the fact that it was included on a Woodland Trust ancient tree inventory or nationally significant trees (see debate on Ancient Trees Protection HL Debates 24 April 2025 Hansard vol 845

Tree Officers in each local authority who have the skill necessary for identifying trees needing protection, advising on appropriate works to be carried out on them and advising on replanting where this is required. It may not be possible to appoint qualified arboricultural experts as Tree Officers, but it will be important for each local authority to have access to specialists with this expertise.

We have concluded that TPOs are under-used at the moment possibly because of lack of capacity within local authorities. We think there should be a proactive approach to making TPOs so that important trees are identified and given protection rather than waiting for them to come under threat.

There are concerns that the level of fines imposed by the courts are too low for the fear of prosecution to act as a deterrent. A recent case brought by Newport Council illustrates this. The case involved the removal of a lime tree in breach of a TPO. The defendant had been told that removal of the tree would increase the value of her house by £50,000 but she was only fined £16,000 albeit with a further order of £100,000 towards the Council's cost.¹²⁷

The low level of fines may be because trees have been assessed on their visual amenity value only. It is to be hoped that the introduction of the wider definition of amenity and the enhanced appreciation of the wider environmental impact of unlawful felling of protected trees will lead to higher fines in the future.

We also agree that unlawful felling is only one aspect of the legislation and that more attention should be paid to the lawful activities undertaken. This is particularly relevant for dying trees and those that are becoming dangerous. The new regulations will limit the availability of the exception from the need for consent, which we welcome, but there will still be occasions where work will be necessary on trees of this type. The life

available at <https://hansard.parliament.uk/lords/2025-04-24/debates/B26AEABB-A372-4DEF-BE3C-C9E5ECD59C7F/AncientTreesProtections>.

¹²⁷ As reported in The Times, August 25 2025, p.10.

and health of these trees can best be safeguarded by the use of appropriate conditions attached to consents for works.

At present the information available on TPOs varies considerably between local authorities in Wales. The development of a publicly accessible digital portal mapping platform would provide a clearer identification of which trees are protected by TPOs. It could also provide an explanation of the legal rules in relation to TPOs. Such a portal would help raise awareness of TPOs and would ensure that landowners, those contracted to perform works to trees and interested parties have access to the information they need to ensure that they can comply with their responsibilities.

Felling a tree that is protected by a TPO is a strict liability offence, meaning that ignorance of the TPO is no excuse (unless, of course, that information has not been made publicly available by adding it to the register of TPOs). Nevertheless, we think that adding a further duty on those requiring others to carry out work on their behalf to check whether there is a TPO in place would add to the protection.

4.5.1 Protection of ‘important’ Trees

At present, a TPO is the only way of protecting an individual tree. There is no legal requirement, however, for local authorities to make a TPO on veteran trees in their area nor for them to actively seek out trees for protection.

The felling of the Sycamore Gap (200 years old) and the Enfield Oak (500 years old) has generated considerable public interest. Neither tree was protected by a TPO. In the case of the Sycamore Oak, this is not surprising as the tree was not in a town. The Enfield Oak, however, is a well-known public landmark. A TPO has now been made to protect what remains of the tree.¹²⁸

The felling of these trees has been raised in questions in Parliament. The minister was asked what assessment the UK government has made of the adequacy of protections

¹²⁸ See <https://www.treelaw.co.uk/sycamore-gap-the-enfield-oak-are-they-the-same/> for more information.

in place to prevent the felling of ancient trees of national significance and, further, why there was no national list of heritage trees akin to the list of ancient monuments and listed buildings. In her response, the Under-Secretary referred to a recent report *Protecting Trees of High Social Cultural and Environmental Value*.¹²⁹

This makes several recommendations for improving the protection of important trees which government is currently considering. It notes that there is:

- no specific official mechanism for recognising and designating important trees;
- no specific legal protection for important trees;
- no dedicated fund for management costs for important trees.

The report does not define ‘important tree’ but notes that it might include ancient, veteran, champion and heritage trees. It goes on to recommend that further work is needed on this definition.

It concludes that TPOs are insufficient to provide the necessary protection and is in favour of the approach taken in some European countries where important trees are designated as national monuments.

Although the report is concerned primarily with the situation in England, its conclusions are relevant to Wales as well. The need for clarification about which individual trees should be protected and why is something the IEPAW would endorse. Once a tree has been identified as ‘important’ in this respect, we support the idea that it should receive automatic protection through some sort of legal designation. We think there would be considerable merit in introducing a new type of legal designation akin to ancient monument to ensure that nationally important trees are given proper recognition and protection. Meanwhile, we think the feasibility of making all ancient trees recorded in the Ancient Tree Inventory subject to TPOs should be explored.

¹²⁹ Published by The Trees Council and Forest Research, April 2025. Available at https://treecouncil.org.uk/wp-content/uploads/2025/04/Protecting-Trees-of-High-Social-Cultural-and-Environmental-Value_Final-Report_October-2024_v3.0-APRIL-2025.pdf

4.6 Recommendations on TPOs

Recommendation 9: The Welsh Government should publish updated versions of TAN 10 and *Protected Trees: A Guide to Tree Preservation Procedures* as soon as the new Regulations are in force.

Recommendation 10: The Welsh Government should require, within a year of this report, that every Local Authority has a dedicated Tree Officer for the management of TPOs and should provide additional resources where necessary.

Recommendation 11: The Welsh Government should ensure, within one year of this report, that every Local Authority in Wales has access to specialist arboricultural experts and should provide funding specifically for this. We suggest this may be achieved by collaboration and pooling of resources as a way of sharing expertise between tree officers across Wales.

Recommendation 12: The Welsh Government, working with Local Authorities and NRW should set up a publicly accessible digital portal mapping platform to provide information on which trees are protected under TPOs.

Recommendation 13: The Welsh Government should legislate in the next Senedd term to place a duty on a contractor or a person who requires others to cut trees on their behalf to check whether the trees have a TPO before any felling work commences.

Recommendation 14: The Welsh Government should, within one year of the publication of this report, investigate the feasibility of making all ancient trees subject to TPOs and should commission research which examines the opportunities and implications associated with making TPOs on all veteran and ancient trees recorded in the Ancient Tree Inventory.

Recommendation 15: The Welsh Government should, in the next Senedd term, set up a working group to consider the benefits of a new designation of ‘Important Tree’.

5 Trees and the Planning System

5.1 Development Plans

Planning Policy Wales (PPW) sets out the Welsh Government's land use policies. These must be followed by local authorities both in the formulation of their Local Development Plans (LDPs) and in the way in which they decide on applications for planning permission. The LDP is the key policy for land-use planning at local level. It comprises several documents developed by a local authority including the development plan itself and supplementary planning guidance. What an LDP has to say about trees and woodlands in the locality can be of considerable importance when applications for planning permission are being considered because, where relevant, decisions have to be made in accordance with the plan unless material considerations justify departure from it.¹³⁰

5.2 Planning Decisions

In assessing a planning application, the LPA must consider all relevant considerations. The weight to accord each of these considerations is a matter of planning judgement and one that the courts will not interfere with.¹³¹ The considerations which will be material to a planning application will depend on the type of proposal and its location and context. Therefore, the impact to trees forms one consideration within a wide and diverse range of policy matters which will be weighed and considered within the assessment of a planning proposal.

In making a planning decision the LPA Officer, or the Planning and Environment Decisions Wales, must, where appropriate, consider the impact of the proposal on any trees, hedgerow, woodland and biodiversity. This does not prevent development being approved where the wider public benefit of the development outweighs the harm and/or where the detrimental impacts can be controlled or mitigated through the attachment of planning conditions to the planning decision. Section 6 of the

¹³⁰ Planning and Compulsory Purchase Act 2004 s. 38(6).

¹³¹ *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 75.

Environment (Wales) Act 2016 places a duty on local authorities to seek to maintain and enhance biodiversity, promoting reliance of ecosystems.

Section 197 of the TCPA deals specifically with the protection of trees. It imposes a duty on local planning authorities (LPAs) to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees.

5.3 Planning Conditions

Where planning applications are approved, they may be subject to conditions attached to the permission.¹³² A Welsh Government Circular states that

*[a] local planning authority should not impose conditions on a grant of planning permission to control matters which are the subject of different controls elsewhere in planning legislation such as ... tree preservation.*¹³³

There is a clear steer within the Circular to use the TPO to secure the long-term protection, preservation or planting of trees rather than imposing planning conditions. It also states, however, that

*[w]hen granting detailed planning permission, conditions may be used to secure the protection of trees to be retained, for example by requiring the erection of fencing around the trees during the course of development or restricting works which are likely to adversely affect them.*¹³⁴

¹³² Section 70(2) TCPA 1990 provides that LPAs may grant planning permission, either unconditionally or subject to such conditions as they think fit.

¹³³ WGC 016/2014 *The use of planning conditions for development management* at para. 3.11. Available at <https://www.gov.wales/sites/default/files/publications/2019-05/the-use-of-planning-conditions-for-development-management-wgc-0162014.pdf>.

¹³⁴ Ibid, para. 5.113.

Conditions can also be included establishing details relating to the management and maintenance of planted areas and new trees during a longer period to secure their establishment.¹³⁵

5.4 Evidence on Planning

5.4.1 Questions posed to Stakeholders

Stakeholders were asked the following questions.

- 1 In what ways do you think planning law interacts with the Forestry Act and its implementation? Are there any issues with the way it interacts that prevent the aims and objectives of the Forestry Act being met?
- 2 When an application for planning permission is made in Wales, do you think that the requirements of the Forestry Act are adequately considered? ¹³⁶
- 3 Do you think that the process of applying for planning permission in Wales adequately considers the impact of the felling of trees required for that development?
- 4 What are the impacts of tree felling for development on a whole of Wales basis and do you think those impacts are adequately considered in the planning application processes and law that apply in Wales?

1 In what ways do you think planning law interacts with the Forestry Act and its implementation? Are there any issues with the way it interacts that prevents the aims and objectives of the Forestry Act being met?

Confor stated that the integration between planning law and the Forestry Act 1967 is limited. They expressed the view that greater consideration should be given to the enforcement following illegal felling, especially where coupled with a planning permission. In such cases fines should seriously affect the viability of the development.

¹³⁵ Ibid, para. 5.114.

¹³⁶ Note that there is no statutory duty requiring LPAs to consider the requirements in the Forestry Act 1967.

NRW noted that there are potential interactions between the Forestry Act 1967 and planning law, particularly where a developer fells trees or woodland before applying for planning permission. Where tree works are associated with development proposals, the granting of planning permission under the TCPA 1990 overrides the need for TPO consent, or Conservation Area notice, or felling licence. As such, everyone dealing with the planning process should have good awareness of the implications of a proposal for any trees or woodland.

NRW stated that there was value in their Development Planning Advisory Service (DPAS), pointing out British Standard 5837¹³⁷ to LPAs at Local Development Plan stage. This is the main opportunity for NRW to protect trees through planning as a statutory consultee.

A former Forestry Commissioner stated that there was not always sufficiently strong arboricultural knowledge in either local authorities or NRW to ensure that planning applications fully address damage to, and possible longer-term loss of, trees.

There was no suggestion that woodland creation should be classed as development and therefore require planning permission. In Confor's view this 'would be frankly disastrous'! As NRW noted, no-one has successfully argued that tree works are development requiring planning permission.¹³⁸

2 When an application for planning permission is made in Wales, do you think that the requirements of the Forestry Act are adequately considered?

Respondents generally agreed that the requirements of the Forestry Act 1967 are not adequately considered in applications for planning permission. Coed Cadw noted that the Forestry Act 1967 is not designed or suited to protect trees and woodland in a

¹³⁷ BS 5837:2012 *Trees in Relation to Design, Demolition and Construction: Recommendations*. Available at <https://www.bathnes.gov.uk/sites/default/files/2020-01/BS5837%202012%20Trees.pdf>.

¹³⁸ NRW are quoting Charles Mynors, the acknowledged expert on the law of trees and the author of *The Law of Trees, Forests and Hedges* the 3rd edition of which was published in 2022.

planning and development context and noted that the current edition of the PPW made no mention of the Act¹³⁹.

3 Do you think that the process of applying for planning permission in Wales adequately considers the impact of the felling of trees required for that development?

Respondents were generally of the view that the process for applying for planning permission in Wales does not adequately considers the impact of the felling of trees.

Cardiff Civic Trust stated that the planning process failed to account for the preservation of trees on a site. They noted that it is often the case that the developer wishes to fell trees on the perimeter and argued that these could easily be incorporated into the design of the development and even enhance it. In their view there was no appetite within the local authority to encourage or force developers to do this.

It was suggested by a former Forestry Commissioner that there should be a requirement for applicants not just to identify trees to be felled, but also to identify in plans root protection zones for those to be retained. They thought there should also be a requirement for site activity to avoid compaction, ‘accidental’ cutting through root systems, trunk damage, or storing of materials against trees. All of these are known to lead to developers either removing such trees on the basis they are damaged and may become dangerous or these trees becoming moribund or dead over the coming years and therefore being removed.

NRW considered that the process of applying for consent, either through TPO, felling licence or planning permission, could be improved. They believed that fines for illegal felling could better act as a deterrent and a net gain valuation approach to compensating for unavoidable tree removals could be applied. Also, they noted that there was a need for the right level of skill, knowledge and experience of applicants, agents and decision makers in the process.

¹³⁹ It is not referred to in PPW 12 either.

NRW noted that improvements can be made across large geographical areas. They cited the National Forest in the Midlands of England as an example. In this area developers are required to retain existing woodland as part of their proposals. The resulting homes and offices are surrounded by woodland making an attractive and biodiverse landscape. The increased desirability of living and working in these areas is reflected in increased property values. This approach treats trees and woodlands as an asset rather than an obstacle or constraint. They noted that this is an important opportunity presenting itself in Wales with Welsh Government's development of a National Forest Programme.

NRW noted that the best protection for trees and woodlands comes from having strong policies in the LDP and a focus on what benefit can be provided for future generations. Mature trees and existing woodland on development sites should be seen as a benefit for future users rather than a hindrance for developers.

NRW noted that the Royal Institute of British Architects (RIBA) planning chart should raise awareness of the benefits of existing and new trees, but that trees and woodlands are barely referred to.¹⁴⁰ This perhaps indicates that little thought goes into linkages between planning consents and the provision of benefits for future generations.

4 What are the impacts of tree felling for development on a whole of Wales basis and do you think those impacts are adequately considered in the planning application processes and law that apply in Wales?

Confor stated that there is no mechanism for capturing the number of trees felled as a result of planning applications. They thought this was potentially a significant number.

¹⁴⁰ The RIBA Plan of works is a process document. It doesn't raise any specific considerations or topics to take into account but provides a schematic of the general process and stages from design to project completion. Available at [2020RIBAPlanofWorktemplatepdf.pdf](https://www.architecture.com/2020RIBAPlanofWorktemplatepdf.pdf) (architecture.com) .

Coed Cadw stated that they had evidence that, as at December 2019, 39 development proposals threatened 130 ancient woods in Wales. They noted that they do not have the capacity to track cases of individual trees threatened by planning applications but considered that the number is substantial. They thought that planners often regard mature trees as substitutable by new planting despite evidence clearly showing that this is not the case. They suggested that there should be a presumption in the planning system against the felling of large mature and veteran trees. This presumption should be adopted into PPW and LDPs.

They also considered that Local Authorities should be required to report on mature tree loss as part of monitoring tree cover and NRW should monitor and report on the nature and extent of felling in ancient woodland and on enforcement. This information should be reported under the Wales Woodland Strategy and in the statutory State of Natural Resources Report.

A former Forestry Commissioner stated that the planning aspect of new planting on application sites needs addressing more strongly. She believed that there should not just be a proposal to plant but to ensure the successful establishment of such trees. The approach is often aimed at 'ticking the box' rather than a longer-term commitment. They also stated that the enforceable use of compensatory planting areas / funding contributions could be made stronger and be used more frequently.

NRW noted that there was evidence of woodland loss in Wales, mainly due to development. Over a 12-year period to 2010, 133 ha of woodland had been lost. NRW reiterated their view that fines for illegal felling could better act as a deterrent and a net gain valuation approach to compensating for unavoidable tree removals could be applied.

5.5 Changes in Planning Policy

There have been some changes in planning policy since we received evidence for this Report, notably the latest edition of Planning Policy Wales, PPW 12, which was issued

in February 2024. The section on ‘Trees, Woodlands and Hedgerows’¹⁴¹ addresses some of the concerns raised in the evidence. It aims to embed the environmental importance of trees and woodlands into planning policy and includes some strong requirements for local authorities to follow. Paragraph 6.4.37 recognises their great importance for biodiversity, providing important connecting habitats for resilient ecological networks. The importance of urban trees in creating distinctive and natural places which deliver health and well-being benefits to communities is also emphasised. LPAs must promote the planting of new trees, hedgerows, groups of trees and areas of woodland as part of new development.

Paragraph 6.4.39 states that LPAs must protect trees, hedgerows, groups of trees and areas of woodland where they

- have ecological values;
- contribute to the character or amenity of a particular locality; or
- perform a beneficial green infrastructure function.

The paragraph goes on to give advice on tools to help establish a baseline canopy cover and to help with design and species choice in urban areas.

Paragraph 6.4.40 states that the retention, protection and integration of trees and woodlands should be identified in planning applications. Where these are capable of making a significant contribution to the area the trees should be retained and protected.

Paragraph 6.4.41 states that LPAs should also recognise the importance of trees in the countryside and should consider positive mechanisms of rural tree retention.

The importance of retaining trees is further emphasised in paragraph 6.4.42. Permanent removal of trees and woodlands will only be permitted where it would achieve significant and clearly defined public benefits. Where loss is unavoidable,

¹⁴¹ *Planning Policy Wales* Edition 12 February 2024. Available at <https://www.gov.wales/sites/default/files/publications/2024-07/planning-policy-wales-edition-12.pdf>.

developers will be required to provide compensatory planting. The paragraph goes on to describe the level of compensation required.

Paragraph 6.4.43 notes that ancient woodland, semi-natural woodlands, individual ancient, veteran and heritage trees are irreplaceable natural resources of significant landscape, biodiversity and cultural value. They are to be afforded protection from development that would result in their loss or deterioration unless, very exceptionally, there are significant and clearly defined public benefits. Where a site is recorded on the Ancient Woodland Inventory, LAs should consider the advice of NRW. They should also have regard to the Ancient Tree Inventory.

Finally, paragraph 6.4.44 provides that the protection and planting of trees should be delivered, where appropriate:

- through locally specific strategies and policies;
- through imposing conditions on planning permission; and/or
- by making TPOs.

NRW referred in their evidence to BS 5837 *Trees in Relation to Design, Demolition and Construction: Recommendations*.¹⁴² The draft of an updated and revised version was issued for comment in 2024. It is intended that the new version will carry greater weight and will be in the form of a Code of Practice rather than a set of recommendations. It contains changes that address some of the concerns raised in evidence. For example, there is more detailed guidance on how to assess and calculate root protection areas especially in relation to veteran trees and ancient woodland. There is also a revised method for arboriculture impact assessments of the effects of construction on trees so that they factor in broader environmental benefits such as biodiversity, shade, cooling and flood mitigation.¹⁴³

¹⁴² See Note 136 above.

¹⁴³ <https://www.awatrees.com/2024/09/13/revision-of-bs5837-trees-in-relation-to-design-demolition-and-construction-what-you-need-to-know/#:~:text=Get%20Involved:%20Consultation%20Deadline%20October,is%20issued%2C%20likely%20in%202025.>

5.6 IEPAW Conclusions on Planning

The IEPAW welcome the recent changes to planning policy. These should lead to an enhanced awareness of the importance of trees and woodland. In our recommendations we make several suggestions for ways in which this policy might lead to changes in practice.

Other concerns still remain, however. In our view, the most important of these is the availability of suitably qualified and experienced arboriculturists¹⁴⁴ within local authorities to assist them in their work on trees.

While the IEPAW endorses an approach that places particular emphasis on important trees, however these are defined, we also believe that there is a fundamental need to take account of the importance of all trees when decisions are made that will affect them. For this reason, we propose that planning policy should include a statement to ensure that, when a proposed development includes an intention to remove trees, due consideration is given to the alternatives to removal with a view to retaining as many trees as possible.

5.7 Recommendations on Planning

Recommendation 16: All Local Authorities in Wales should take account of the British Standard 5837 in preparing and implementing their Local Development Plan.

Recommendation 17: The Welsh Government should, within one year of the publication of this report, change planning policy to require Local Authorities to consult with their specialist arboricultural experts on any planning application that has a significant implication for trees.

Recommendation 18: The Welsh Government should, within one year of the publication of this report, update planning policy to require planning applicants

¹⁴⁴ There is no definition of suitably qualified and experienced arboriculturist in the draft revised BS 5837 which has led to concerns that the criteria are not robust enough to ensure the necessary level of professionalism. See Note 136 above.

to identify in plans for development root protection zones for any trees to be retained as part of that development.

Recommendation 19: Local Authorities, when preparing and implementing their LDP, should provide a detailed explanation of how development proposals involving the loss of trees or damage to tree roots will be determined.

Recommendation 20: We recommend that Local Authorities monitor the felling of trees where this is carried out as part of development.

Recommendation 21: We recommend that the next revision of PPW should include a statement to ensure that, when a proposed development includes an intention to remove trees, due consideration is given to the alternatives to removal with a view to retaining as many trees as possible.

6 Looking to the Future

Trees and woodlands are a vital resource that make an invaluable contribution to the climate, conservation of water, preservation of soils, and the conservation of biodiversity, as well as to our mental and physical wellbeing. Much has happened since the work on this report began. We are pleased to see the increased awareness of the environmental importance of trees and woodlands. Changes have been or are proposed to be made to law and policy to reflect this.

There is currently no way for regulators to accurately assess how much tree cover is being lost each year. An exemption in the Forestry Act 1967 allows landowners to remove five cubic metres per quarter without the need for a licence. Over time this could lead to a significant number of trees being cut down and there is currently no way of monitoring the impact of this exemption. We do not think this is satisfactory.

In our recent report on hedgerows, we recommended that there should be legal protection for all hedgerows against removal unless authorised. Only a few trees currently enjoy a similar level of protection. Felling licences were introduced as a tool for forestry regulation, not for environmental protection. Similarly, TPOs were introduced to protect trees for their visual amenity values not their importance for biodiversity. While, in theory, trees are an important consideration in planning decision-making, the disjuncture between the forestry and planning regimes does not always ensure the necessary safeguards are put into place.

The Sustainable Farming Scheme to be introduced in 2026 contains two Universal Actions (UAs) of direct relevance to trees and woodlands.¹⁴⁵ Under UA 9, all farmers participating in the scheme will be required to actively maintain their existing woodland in line with specific management requirements. Under UA10, all farmers will be

¹⁴⁵ <https://www.gov.wales/sites/default/files/pdf-versions/2025/7/1/1753693517/sustainable-farming-scheme-2026-scheme-description.pdf> and summary document at <https://www.gov.wales/sites/default/files/publications/2025-07/sustainable-farming-scheme-2026-summary-leaflet.pdf>.

required to develop a plan identifying opportunities for planting additional trees and they will be expected to execute this plan in due course.

In March 2025, the Welsh Government published terms of reference for a Trees and Hedgerows Stakeholder Delivery Group¹⁴⁶, a voluntary group set up to provide advice and support to the Government. Its role is to:

- support the development of the Sustainable Farming Scheme level targets for tree planting and hedgerow creation and the tools to deliver them, enabling discussion at the SFS Ministerial Roundtable and a decision by Welsh Ministers;
- support improved understanding across the sector of the purpose and value of the scheme level targets by explaining and championing the multiple benefits of trees and hedges for the farm and the environment;
- provide advice on annual trajectories for tree planting & hedgerow creation in support of Welsh Government targets, including land both within and outside of the Sustainable Farming Scheme;
- monitor progress against the annual trajectories, making recommendations for action if delivery is not on track;
- review and develop a shared understanding of the barriers to planting and incentives for planting, and make recommendations on actions to make it an attractive and feasible option on Welsh farms, as well as easier and quicker for landowners and managers to get trees and hedges planted;
- identify actions to change the narrative on integrating trees and hedges on farms – recognising the multiple benefits they can have for farm businesses and the environment; and
- consider approaches for ensuring the on-going maintenance and management of trees and hedgerows in Wales in way which maximises the multiple benefits of those natural resources.

¹⁴⁶ <https://www.gov.wales/trees-and-hedgerows-stakeholder-delivery-group-terms-reference-html> .

In June 2025, the Welsh Government published *Ancient Woodland: Strengthening Protection*¹⁴⁷ which sets out its approach to delivering its commitment to do this. An annex to the document gives a summary account of how several different measures to protect ancient woodlands are working:

- PPW 12
- Planning Bill and proposed new TPO regulations
- Welsh Strategic Road Network Nature Recovery Action Plan
- Amendments to Forestry Act 1967
- Sustainable Farming Scheme
- Woodland Restoration Scheme¹⁴⁸
- National Forest Programme: the Woodland Investment Grant (TWIG)¹⁴⁹
- Nature Network Programme¹⁵⁰
- Woodland for Wales indicators for ancient woodland.¹⁵¹

Many of these initiatives are relevant to all trees not just those in ancient woodland and all are welcome developments. The collection of data under the Woodland for Wales indicators for ancient woodlands is particularly welcome as it should enable a realistic estimate of the status of ancient trees and woodland which will provide a baseline for future monitoring and assessment.

The Welsh Government published its *Timber Industrial Strategy* in July 2025.¹⁵² Although this is primarily concerned with the timber resource, it is written in the context of the need to acknowledge the wider, environmental importance of trees and

¹⁴⁷ <https://www.gov.wales/ancient-woodland-strengthening-protection> .

¹⁴⁸ This provides payment to woodland owners to restore PAWS after felling due to *Phytophthora ramorum* disease.

¹⁴⁹ This provides financial support to improve existing woodland with the potential to become part of the National Forest.

¹⁵⁰ This provides financial support to improve condition, connectivity and resilience of ancient woodland where it is part of the protected sites network.

¹⁵¹ This is a scheme to capture data on heritage trees and the extent of ancient woodlands and felling licence approvals for management of ancient woodlands.

¹⁵² *Making Woodwork for Wales: The Welsh Government's Timber Industrial Strategy*. Available at <https://www.gov.wales/sites/default/files/publications/2025-07/timber-industrial-strategy.pdf> .

woodland. It describes the wide range of benefits that trees offer beyond timber production:¹⁵³

- carbon sequestration and storage
- ecosystem services
 - enhancing biodiversity
 - connecting habitats
 - stabilising soils and reducing erosion
 - improving soil filtration
 - regulating water flows helping prevent flooding
- health benefits
 - improving local air quality
 - cooling effects
- mental health and well-being benefits
 - locations for physical exercise
 - access to nature
- agricultural benefits
 - shelter and shade for livestock
 - additional source of income through sustainable harvesting and non-wood forestry products.

There is a commitment to woodland creation including an increase in the area of the WGWE managed by NRW.¹⁵⁴ All this woodland is currently managed to the UK Woodland Assurance Standard (UKWAS) which is a common audit standard for independent certification that woodland is being managed sustainably.¹⁵⁵ The strategy states that Welsh Government will, among other things:

- support woodland creation both within and outside of the Sustainable Farming Scheme;
- develop options for increasing the WGWE;

¹⁵³ Ibid sections 1.2.1 and 1.2.2.

¹⁵⁴ Ibid section 1.3.

¹⁵⁵ For further information see <https://ukwas.org.uk>.

- work collaboratively with Forest Research and NRW to see whether remote sensing could provide more accurate data on the existing forest resource.¹⁵⁶

There is also a commitment for NRW to provide information on Environmental Impact Assessments for deforestation, illegal felling and other known removals on non-WGWE woodland.¹⁵⁷

All these initiatives reflect the emphasis now being paid on the environmental importance of trees and woodlands. We, nevertheless, still question whether existing arrangements are sufficiently robust to ensure that our trees and woodlands are conserved for future generations. The existing legislative and policy framework is piecemeal and lacking in integration, with different layers of protection overseen by different authorities. This has resulted in an overly complex system of protection which has not always been applied in a consistent manner.

The enhanced recognition now attributed to the importance of trees and woodlands for their environmental, economic, social and cultural value must be matched by improved management and safeguarding. It is essential that the bodies with responsibility for the legislation, NRW and local authorities, are able to devote sufficient resources to the work.

¹⁵⁶ Note 134 above at section 1.8.

¹⁵⁷ Ibid.

Appendix 1 Submissions

Redacted 1st submission to the IEPAW, received 4th March 2021:

This 'concern' relates to the function of tree preservation orders, the forestry act and planning law in Wales. In my view these pieces of legislation do not deliver their intended outcome and are practically impeded due to their interaction with each other and with other legislation and processes. It is also very difficult to find out how these laws are delivered together and whether appeals have been successful or not, or even made in the first place, unless the media picks cases up.

For example, tree preservation orders and felling licences within the forestry act are supposed to protect trees and woodland and prevent their felling without restocking or appropriate approval to remove trees (via the TPO process with local authorities or via Natural Resources Wales for felling licences and EIA deforestation approval). Planning law often ignores these restrictions completely (which clearly impacts their function), but also developers regularly ignore the rules because the risk of being fined is low, the cost is low compared to their profit and they can and do appeal to reduce fines. In the meantime, trees and woodlands that cannot be adequately replaced are lost and Welsh Government's target of protecting and increasing woodland cover is undermined.

Even in cases such as this below that are egregious and proven in court, the fine is appealed and I haven't been able to find any evidence of what happened next. Obviously due process is important, but a fine must be a big enough deterrent that the damage is avoided in the first place. Woodland and mature trees can't just be replanted, they take decades to grow and the soil and woodland ecology is often significantly degraded by their loss.

<https://www.bbc.co.uk/news/uk-wales-50061303>

<https://www.walesonline.co.uk/news/wales-news/enzo-homes-swanse-redwood-appeal-19560320>

I have also heard from forestry staff in Natural Resources Wales and environmental non-governmental organisations that the fines from breaching the Forestry Act are not

sufficient deterrents and when they are successfully applied (which isn't very often), they are regularly reduced at appeal or undermined by a prohibitively expensive court process that makes enforcing the rules uneconomical for Natural Resources Wales. For example, the case below is a recent Welsh case with a particularly large number of well-established trees felled that was successfully prosecuted, however I have heard, but can't find any information publicly, that it has now been substantially reduced on appeal.

<https://www.bbc.co.uk/news/uk-wales-south-east-wales-41279069>

This doesn't include those cases where planning law completely overrides these pieces of legislation in the interest of development locally, without taking a national view. The Environment Act and the Wellbeing of Future Generations Act both talk about long-term, sustainable approaches that balance SMNR outcomes. We need environmental law and policy to be coherent and for rogue developers to be effectively policed. We also need to give regulators teeth and ensure that local authorities and Natural Resources Wales act in unison, supported by Welsh Government.

I do not have much faith in this interim process - this is a substantial climb down from the EU position of being able to levy infractions and actively investigate complaints, however I thought it worth trying as Welsh Government need to make common sense links between different legislation to have a joined-up approach and stop the loss of woodland and trees for the profit of a few developers at the expense of the community.

Redacted 2nd submission to the IEPAW, received 11th May 2021:

I believe that outdated forestry legislation is hampering wildlife conservation because licence authorities cannot refuse tree felling licences on wildlife conservation grounds

<https://theconversation.com/rare-woodland-wildlife-at-risk-because-of-50-year-old-tree-felling-rules-107535>

Section 10 2c of 1967 forestry act applies on to Scotland. Wales should either adopt 5c or put in place new legislation that covers this aspect.

10 Application for felling licence and decision of Commissioners thereon.

- (1) An application for a felling licence may be made to the [F91 appropriate forestry authority] in the prescribed manner by a person having such an estate or interest in the land on which the trees are growing as enables him, with or without the consent of any other person, to fell the trees.
- (2) Subject to the provisions of this Act (and, in particular, to their duty to take advice under section 37(3), the [F91 appropriate forestry authority] may on any such application grant the licence, or grant it subject to conditions, or refuse it, but shall grant it unconditionally except in a case where it appears to them to be expedient to do otherwise—
 - (a) in the interests of good forestry or agriculture or of the amenities of the district; [F92 or]
 - (b) for the purpose of complying with their duty of promoting the establishment and maintenance F93 . . . of adequate reserves of growing trees. [F94; or]
 - [F94 (c) for the purpose of conserving or enhancing the flora, fauna or geological or physiographical features, or the natural beauty or amenity, of any land.]

Redacted 3rd submission received 2 March 2023

This submission is concerned with the lack of protection for trees and woodland offered by existing legislation and regulations.

The lack of enforcement of existing legislation (both by NRW and local authorities) and the reason often given for this is lack of resources. This links with the lack of responsiveness to reported incidents.

Legislation is being ignored or is applied retrospectively when the damage to wildlife and biodiversity has already been done. Exemptions are too broad and wide ranging and can be easily misinterpreted. Prosecutions are only, if ever undertaken when the damage is far in excess of the legal criteria. Knowledge of the regulations can be patchy. Damaging operations may occur out of office hours and be undetected until too late.

There is an urgent need to modify/adapt tree laws/regulations including current exemptions.

The existing legislation does not take account of the carbon stored in woodland soils or in individual and small groups of trees and the associated and interconnected soil community. This needs to be amended in light of the current climate change and ecological crisis, with temperatures rising at a faster rate than was previously predicted. It also needs to take account of the incremental damage to and fragmentation of habitats as a result of individual or small numbers of trees being removed at a time (and therefore within the current law), whereas the cumulative effect

is much more impactful, both for biodiversity, ecosystem and services and carbon storage.

A substantive body of evidence, highlighting the need for legislation and regulation on the management and protection of trees and woodland, is provided by recent reports summarising the condition of trees and woodland in the UK and Wales. All these reports highlight the poor ecological condition of trees and woodland and on -

Welsh Government SMR2: Wild Birds WAG cross compliance with Wildlife and Countryside Act 1981.

Tree Preservation Orders (for amenity value)

NRW Tree Felling Licences – felling licences (for timber value).

Some woodland is protected as SACs for either the habitat or for specific species eg some bat woodland SACs in Gwynedd and Pembrokeshire.

The Hedgerow Regulations 1997 does sometimes protect **mature trees**, if someone applies to remove the entire hedge, bank and roots and all, but doesn't protect the same trees if only the tree are being felled or as part of "coppicing"

Appendix 2: Written Evidence in Response to Call for Evidence

Cardiff Civic Society

Coed Cadw

Confor

Members of the Woodland Strategy Advisory Panel

Natural Resources Wales

RSPB

The IEPAW is also grateful for the comments on the factual accuracy of the draft report made by NRW and the Welsh Government.