

Explanatory Memorandum to The Forestry (Felling of Trees) (Amendment) (Wales) Regulations 2023

This Explanatory Memorandum has been prepared by the Climate Change and Rural Affairs Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Forestry (Felling of Trees) (Amendment) (Wales) Regulations 2023.

I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Climate Change
12 October 2023

PART 1

1. Description

1.1 The Forestry (Felling of Trees) (Amendment)(Wales) Regulations 2023 (“these Regulations”) amends the Forestry (Felling of trees) Regulations 1979 (“the 1979 Regulations”). These amendments make provision for procedural matters arising from new sections inserted into the Forestry Act 1967 (“the 1967 Act”) by the Agriculture (Wales) Act 2023 (“the 2023 Act”). The 2023 Act can be found at [Agriculture \(Wales\) Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 None.

3. Legislative background

3.1 The provisions in the 2023 Act amend the 1967 Act to allow environmental conditions to be added to felling licences and enables the amendment, suspension or revocation of felling licences already granted. A number of the new sections in the 1967 Act, inserted by the 2023 Act, give rise to new procedural matters, such as “prescribed period” and/or “prescribed manner”. This requires amendment to the 1979 Regulations which make provision for various procedural matters under the 1967 Act. These amendments are necessary to enable the new sections to the 1967 Act to function effectively. Making these Regulations will provide for those necessary amendments.

3.2 The enabling power to make these Regulations comes from section 32(1) of the 1967 Act. This power provides the Welsh Ministers can set out, in regulations, the prescribed period and manner for sections of the 1967 Act.

3.3 Section 56(1) of the 2023 Act provides that Part 4 to the 2023 Act (amendments to the Forestry Act 1967) comes into force, for the purpose of making regulations under section 32 of the Forestry Act 1967, on the day after the day on which the 2023 Act receives Royal Assent. Royal Assent of the 2023 Act was on 17 August 2023.

3.4 These Regulations are being made under the negative procedure.

4. Purpose and intended effect of the legislation.

4.1 These Regulations have been made so that they come into force at the same time as the new sections in the 1967 Act. This was intended to be in January 2024 but has been deferred to 1 April 2024 following requests from stakeholders. This deferment allows more time for stakeholder engagement

on the implementation of the new sections of the 1967 Act and for the forestry sector to prepare for their commencement. Making these Regulations now creates certainty for the forestry sector in making such preparations.

4.2 These Regulations are intended to ensure that the new sections of the 1967 Act function effectively. The following new procedural instances have been identified and are addressed in these Regulations.

Tree Preservation Orders (“TPOs”)

4.3 New sections 10A(3) and 24F(4) of the 1967 Act make provision for trees to which a TPO relates. These new sections introduce a prescribed period in which the local authority who made the TPO (“the TPO authority”) may respond to Natural Resources Wales (“NRW”) if they wish to object to:

- a proposal to amend a felling licence by agreement between NRW and the person responsible, under new section 10A of the 1967 Act or
- the serving of a notice by NRW under new section 24F of the 1967 Act, where someone has either breached a felling licence condition or felling under the licence would cause or likely cause significant harm to wildlife or the environment e.g. a new sensitivity has come to light.

4.4 This prescribed period is important as the TPO authority may have had no objections to the original felling licence application, but may have cause to object to proposed changes.

4.5 These Regulations set out the prescribed period in both instances is to be **one month**. This is in line with the existing prescribed period referred to in sections 15(2) and 19(3) of the 1967 Act, which also relate to TPOs and as set out in Regulations 7 and 9 of the 1979 Regulations respectively.

4.6 The Regulations reinforce the exception to the prescribed period for an objection as set out at sections 10A(1)(b) and 24F(2) of the 1967 Act where “emergency criteria” would apply. This enables action to be taken immediately to prevent further environmental damage.

Appeals against notices served under new sections 24C(3), 24D(2) and 24E(3)

4.7 New section 26C(1) of the 1967 Act introduces a prescribed period and prescribed manner in which appeals against notices served under new sections 24C(3), 24D(2) and 24E(3) of that Act must be made.

4.8 These notices are summarised as:

- A notice under new section 24C(3) may be served where the conditions of a felling licence have been breached.
- A notice under new section 24D(2) may be served on a new owner where a previous owner has breached the conditions of a felling licence but has

not undertaken the steps required as a result of that breach, before selling the land.

- A notice under new section 24E(2) may be served where no breach of felling licence conditions has taken place but there is a risk of significant harm.

4.9 These Regulations provide the prescribed period for such appeals is to be **three months**. They further provide that the prescribed manner in which an appeal must be made is on new Form 9A as set out in Schedule 2 to these Regulations, served on the Welsh Ministers.

4.10 These Regulations are in line with the current prescribed period and prescribed manner in respect of existing section 25(1) of the 1967 Act, and set out in Regulation 14 of the 1979 Regulations.

4.11 These Regulations provide an exception to this prescribed period for appeals to which a suspension relates, as set out at new sections 26A(2)(e) and 26B(2)(d) of the 1967 Act. In these cases, the appeals prescribed period would extend to the period of the suspension, so that the person to whom the notice relates is able to appeal to have the suspension lifted earlier by a further notice in accordance with new sections 24C(7)(b) or 24E(4)(b). A notice may suspend a felling licence for more than three months. This provision is intended to allow those licence holders subject to such a suspension to serve an appeal even after the initial three months appeal prescribed period has expired.

Compensation claims

4.12 New sections 26D, 26E and 26F of the 1967 Act set out circumstances where compensation may be payable. New section 26G makes further provision for compensation claims and provides for the prescribed period and manner that compensation claims must be made, to be specified.

4.13 In relation to claims under new sections 26D, 26E and 26F, the proposed prescribed period for claims to be made is **eighteen months** beginning on the day after the day on which the Welsh Ministers send notification of a successful appeal outcome and cancellation of the notice.

4.14 The existing 1979 Regulations do not currently set out any timeframe for claims to be made. This prescribed period is considered reasonable in order to resume and complete the felling operation, as well as collate evidence of costs to support a claim.

4.15 The Regulations set out that compensation claims must be served on NRW and submitted on Form 1A in Schedule 1.

Effect

4.16 The Regulations will apply to TPO authorities where they receive written notice from NRW under new sections 10A and 24F inserted into the 1967

Act. The Regulations also apply to foresters or land managers who receive a notice served under the new sections 24C(3), 24D(2) and 24E(3) of the 1967 Act.

4.17 If the Regulations are not made, the new sections of the 1967 Act, inserted by the 2023 Act, will not function correctly in relation to TPO's, appeals and compensation claims as there will be no prescribed periods or prescribed manners as required by those new sections.

5. Consultation

5.1 A shortened consultation period of 4 weeks was undertaken. The following factors were considered in undertaking this consultation.

- The detail of the forestry changes are on the face of the 2023 Act and were consulted upon previously. The prescribed manner and period covered in these Regulations were only part of that approach.
- The 2023 Act was subject to scrutiny at both stage 3 and report stage and opportunities were available for interested stakeholders to lobby for more detail or to make suggested changes or suggestions for implementation of the forestry provisions.
- The consultation was targeted at a small number of representatives of wider stakeholders. This was the same group of stakeholders who provided input into the development of the forestry provisions of the 2023 Act. This group continue to work with NRW on the external guidance on implementing the new powers arising from the 2023 Act. However this did not prevent the wider forestry sector or public taking part in the consultation.
- The proposed prescribed periods and prescribed manners consulted on were, for the most part, consistent with existing provisions in the 1967 particularly in respect of appeals and consulting TPO authorities.
- A stakeholder engagement session was also held by Microsoft Teams on 6 September 2023 to provide the opportunity to discuss the consultation directly with officials.

5.2 The consultation document can be found at [Changes to the Forestry \(Felling of trees\) Regulations 1979 | GOV.WALES](#)

Outcome of the consultation

5.3 A total of 9 responses were received – 5 from members of the stakeholder group and 4 from the wider public. The key outcomes are set out below.

- Tree Preservation Orders – most respondents were in agreement with the one month period, although some flagged the potential to extend the prescribed period for TPO authorities to object by a few weeks. This was balanced against administrative pressures elsewhere in delaying amendments, as well as the impact on delayed felling operations. On

balance, Welsh Ministers considered that the proposed one month prescribed period was the most appropriate.

- Appeals – there was broad agreement in the proposed prescribed period and prescribed manner for appeals against notices served under the new powers, with an extension in prescribed period for notices to suspend a felling licence. Welsh Ministers have implemented those proposals in these regulations.
- Claims for compensation – Although in the minority, those who disagreed put forward arguments around practical forestry operations for extending the prescribed period in which to submit a claim for compensation. The issue was that the costs may not be able to be calculated until the felling operation had resumed and completed. This could be a further twelve months or longer, depending on site conditions and seasonality. Welsh Ministers considered these to be valid reasons and as a result have extended the prescribed period from three to eighteen months.

5.4 A summary of responses which contains the Welsh Government response will be made available on the Welsh Government website following publication of the Regulations.

PART 2 – REGULATORY IMPACT ASSESSMENT (RIA)

6. Options and Cost Benefit Analysis

6.1 These Regulations set out procedural matters introduced by the amendments to the 1967 Act specifically “prescribed periods” and “prescribed manners”. These support the functioning and policy intent of the amendments made to the 1967 Act by virtue of the 2023 Act. In the interests of consistency, these Regulations, for the most part, reflect existing prescribed periods and prescribed manners in similar circumstances within the 1979 Regulations and Forestry Act 1967.

6.2 An RIA was undertaken to support the amendments to the 1967 Act as set out in the forestry provisions of the 2023 Act. This is outlined at Part 2 of the Explanatory Memorandum for the 2023 Act at paragraphs 7.716 to 7.844 (pages 348-381) and can be found at [agriculture-wales-act-2023-explanatory-memorandum.pdf \(gov.wales\)](#). The RIA for the forestry provision was developed with input and scrutiny from the Agriculture (Wales) Bill Forestry provisions stakeholder group, which comprised representatives of the forestry, land and conservation sectors, as well as NRW. We have reviewed the RIA and are content that it remains the best estimate of the likely costs and benefits, given the available information. As it already covers the costs and benefits arising from this SI, the sole purpose of which

is to support the functioning of the forestry provisions of the 2023 Act, a separate RIA to support this SI has not been considered necessary.

Costs

6.3 The relevant sections of the RIA for the 2023 Act in relation to costs are as follows:

Tree Preservation Orders (TPO)

6.4 No costs or benefits specifically relating to TPOs affected by the addition of environmental conditions or powers to amend, suspend or revoke a licence were included in the RIA for the 2023 Act because:

- The costs of adding conditions to felling licenses were covered in the existing RIA for the 2023 Act at para 7.753 (page 357) to para 7.781 (page 365).
- The costs of powers to amend, suspend or revoke a felling licence, including amendment by mutual agreement, were covered in the existing RIA for the 2023 Act at para 7.789 (page 367) to para 7.817 (page 373).
- It was not possible to predict the costs to the private sector of adding environmental conditions (paragraphs 7.765-7.766/page 360) or costs arising from powers to amend, suspend or revoke a felling licence (para 7.799/page 370). This was due to the highly variable nature of felling licences in terms of scale of operations, age, species, site conditions and the circumstances leading to the use of these powers.
- Around 3.6% of felling licence applications in 2022-23 related to TPOs. However it remains impossible to predict what proportion of these would be affected by specific conditions that would give rise to costs to the private sector, owing to the individual circumstances of each site. It is also not possible to predict how many of those felling licence holders would give cause to NRW to serve a notice to amend, suspend or revoke, or the associated costs. Therefore it was not possible to provide these costs in the RIA for the 2023 Act and this remains the case now.

Appeals against notices served under new sections 24C(3), 24D(2) and 24E(3)

6.5 Costs relating to appeals were included in the RIA for the 2023 Act as follows:

- NRW and Welsh Government costs of appeals relating to environmental conditions were included in the RIA for the 2023 Act from paragraphs 7.779 – 7.781 (pages 364-365). These amounted to £12k per year based on 2 appeals per year.
- NRW and Welsh Government costs of appeals due to powers to amend, suspend or revoke a felling licence were also set out in the RIA for the 2023 Act at paragraphs 7.815 to 7.817 (page 373). These amounted to £28k collectively based on an increase to 4 appeals per year.

- Although private sector costs of appeals were omitted from the RIA for the 2023 Act, an estimate of around 2-3 days of agent time per appeal at £1200-£1800 is considered reasonable.
- The incidence of appeals has been historically low although this could increase as the changes to the Forestry Act 1967 are introduced. Any increase in appeal frequency is predicted to remain low, as the expected practice is for NRW to agree conditions with felling licence applicants before these are set in their licences. NRW are expected to engage with felling licence holders in relation to breaches of conditions or where there is potential for significant harm arising from a felling licence, using powers to amend a felling licence by mutual agreement in the first instance. The use of notices to enforce a breach is expected to be used only where necessary, with powers to suspend or revoke a licence used as a last resort. This approach will help reduce the likelihood of appeals arising.

Compensation claims

6.6 Compensation costs are acknowledged in the RIA for the 2023 Act at paragraphs 7.808 to 7.810 (page 372). Compensation cases are predicted to be rare due to the expected approach by NRW to reduce the likelihood of appeals arising. However as set out in the RIA for the 2023 Act, site conditions, timber volume and value is highly variable, so compensation costs were unable to be quantified.

Benefits

6.7 The purpose of these Regulations is to ensure the functioning of the new sections of the 1967 Act inserted by the 2023 Act. Therefore, the benefits arising from this SI are already reflected in the RIA for the 2023 Act and are a combination of benefits arising from the power to add environmental conditions to felling licences, and the power to amend, suspend or revoke a felling licence.

6.8 The relevant sections of the RIA for the 2023 Act in relation to benefits arising from the SI are set out at paragraphs 7.782-7.788 (pages 365-367) and paragraphs 7.818-7.819 (page 374).

7. Integrated Impact Assessment

7.1 An Integrated Impact Assessment (IIA) was undertaken to support the 2023 Act which included the new forestry provisions which amend the 1967 Act. This higher level IIA for the 2023 Act is relevant to these Regulations which relates to the functioning and policy intent of the new sections to the 1967 Act. It is summarised in Part 2 Chapter 8 of the Explanatory Memorandum for the 2023 Act. However the full IIA for the 2023 Act can be found at [Integrated Impact Assessment Template - English \(gov.wales\)](#). The IIA sections in relation to the forestry provisions and this SI are set out below and have been supplemented with additional information where necessary.

What action is the Welsh Government Considering and why?

7.2 As set out at page 6 of the IIA, the new sections inserted in the 1967 Act, by the 2023 Act, allow environmental conditions to be added felling licenses, and to allow felling licenses to be amended, suspended or revoked after licenses have been granted. These powers are intended to prevent felling that would contradict other environmental legislation.

7.3 Ways of Working

- Long Term – the forestry provisions are designed to safeguard wildlife and provide protection from environmental damage during felling operations. This provides long-term benefits to wildlife and the environment.
- Integration- this is set out at page 12 of the IIA for the 2023 Act.
- Involvement – this is set out at page 14 of the IIA for the 2023 Act
- Collaboration and prevention – this is set out at page 15 of the IIA for the 2023 Act
- Impact – this is set out at page 17 of the IIA for the 2023 Act
- Cost savings – this is set out at page 19 of the IIA for the 2023 Act.

What will be the effect on social wellbeing?

7.4 People and Communities – The new sections of the 1967 Act and these Regulations are designed to safeguard wildlife and the environment during felling operations, therefore having a positive impact on local people and communities.

7.5 Children’s rights –Children are not involved in felling operations but may benefit indirectly from the new sections to the 1967 Act through the resulting protection of current and future woodland ecosystem resilience. These Regulations have no impact on children’s rights, being focused purely on enabling the forestry provisions to function correctly.

7.6 Equality –The new sections to the 1967 and these Regulations are likely to contribute to human rights by ensuring that those affected by the use of the new powers have a right to appeal and where appropriate, a right to compensation. We do not consider there to be any impacts on other aspects of equality.

7.7 Rural Proofing – a full assessment is set out in the IIA of the 2023 Act (pages 132-141) which includes the forestry provisions to which these Regulations relate.

7.8 Health - The new sections to the 1967 Act and these Regulations are designed to safeguard wildlife and the environment during felling operations, having a positive impact on the environment and therefore its effect on general human health.

7.9 Privacy – we have considered the forestry provision and these supporting Regulations in relation to privacy and do not feel there are any impacts.

What will be the effect on cultural wellbeing and the Welsh language?

7.10 Woodland management enhances the general resilience of woodlands thereby helping to conserve these as part of the Welsh landscape and cultural heritage of Wales. The new sections of the 1967 Act and these Regulations are a part of that woodland management process so likely to have a positive impact on cultural wellbeing. All guidance and forms in relation to the new sections of the 1967 Act and these Regulations will be produced bilingually. There are no other impacts on the Welsh language envisaged.

What will the effect be on economic wellbeing?

7.11 The IIA for the 2023 Act sets out the impact of the new sections of the 1967 Act (and these Regulations which are required to enable those sections to function effectively), in relation to

- Business, general public and individuals – page 50
- Public sector – page 53
- Justice impact – page 55

What will be the effect on environmental wellbeing?

7.12 The IIA for the 2023 Act sets out the impact of the new sections of the 1967 Act (and these Regulations which are required to enable those sections to function effectively), in relation to

- Natural resources policy – page 59
- Reverse the decline in biodiversity – page 60
- Climate change – The forestry provisions and supporting SI form part of the felling regime for woodland management. As they are designed to safeguard wildlife and the environment during felling operations, they contribute to the resilience of woodland and associated ecosystems, and the production of timber as a renewable low carbon material.

What will be the impact on socio-economic disadvantage?

7.13 The new sections of the 1967 Act and these Regulations relate to site specific circumstances around environmental conditions and felling operations and are not strategic in nature. Therefore we do not consider that the socio-economic duty applies here.

Record of full impact assessments

7.14 The following were undertaken as part of the IIA for the 2023 Act and are of particular relevance to the new sections of the 1967 Act and these Regulations:

- Rural Proofing – (pages 132-141)
- Biodiversity Impact assessment – pages 165,168,171 and 172.

- Economic/RIA – see section 6 above

Conclusion

7.15 This can be found at pages 98 – 104 of the IIA for the 2023 Act. The following is also relevant to the new sections of the 1967 and these Regulations:

7.16 How have people most likely to be affected by the proposal been involved in developing it?

The initial proposal to amend the Forestry Act 1967 was in the consultation “Taking forward Wales’s Sustainable management of natural resources” in 2017. These provisions were consulted on again as part of the Agriculture (Wales) White paper in 2020.

7.17 Further engagement was undertaken through the Agriculture (Wales) Bill Forestry Provisions Stakeholder Group which included representatives from the forestry, land and conservation sectors. This group provided input into the development of the forestry provisions and contributions/scrutiny of the associated RIA. The same group continues to engage with NRW in the development of external guidance on the implementation of the new powers arising from the forestry provisions. They have also been consulted on the proposed changes contained in these Regulations as set out at section 5 of this Explanatory Memorandum.

7.18 Significant impacts – positive and negative and mitigation

These are set out at page 101 of the IIA for the 2023 Act. These Regulations support the policy and functioning of the forestry provisions hence the IIA for the 2023 Act is relevant here. NRW are working with stakeholders to develop clear external guidance on how the powers will be implemented, and are developing internal guidance to ensure consistency and that the powers are not overused. The new powers also provide for an appeal process with a right to compensation where an appeal is successful. These Regulations set out the prescribed period and prescribed manner in relation to both the appeal process and claims for compensation. This right to appeal and potential compensation, in combination with NRW’s compliance with Public Law principles, the regulators’ code and NRW’s own Regulatory Principles will serve to ensure that the new powers are used proportionately and are fully justified.

7.19 Monitoring

This is set out at Section 9 of this Explanatory Memorandum below.

8. Competition Assessment

8.1 The competition filter test has been completed. The Regulations are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.

9. Post implementation review

9.1 These Regulations ensure the functioning of the new sections to the 1967 Act inserted by the provisions of the 2023 Act. The post implementation review (PIR) for those amendments is set out at para 9.8 (page 450) of the Explanatory Memorandum for the 2023 Act. These Regulations will be reviewed as part of that PIR as it supports the functioning of those amendments.