

SL(6)393 – The Forestry (Felling of Trees) (Amendment) (Wales) Regulations 2023

Background and Purpose

These Regulations make amendments to the Forestry (Felling of Trees) Regulations 1979 (“the 1979 Regulations”), to provide for procedural matters arising from new sections inserted into the Forestry Act 1967 (“the 1967 Act”) by the Agriculture (Wales) Act 2023. The amendments set out prescribed periods relating to tree preservation orders and compensation claims, and prescribed periods and the manner of appeal for appeals relating to felling licences.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following nine points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In regulation 1(4), the Forestry Act 1967 is defined as “the Act” in these Regulations, however the term “the Act” is not subsequently used in the body of the Regulations. The term is only used in the textual amendments that are inserted into the 1979 Regulations by these Regulations, but “the Act” is already defined in the 1979 Regulations and therefore does not need to be defined in these Regulations.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulations 4 and 7 insert new provisions into the 1979 Regulations. The headings of the new provisions make reference to section numbers of the 1969 Act, but do not then go on to include the words “of the Act”. Although the meaning may be inferred from the remainder of the provisions to be inserted into the 1979 Regulations, the new headings are inconsistent with the remainder of similar provisions in the 1979 Regulations and do not assist the reader of the Regulations.



Similarly, the headings preceding regulations 5 and 7 make reference to sections but do not refer to the Act which they are from. The heading preceding regulation 5 also refers to the NRBW which is not defined for the purpose of these Regulations.

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulations 5 and 7 insert new regulations 14A and 15A respectively into the 1979 Regulations. Throughout these new regulations reference is made to sections, but on the majority of the occasions when this occurs it is not specified what Act these sections are from. The references to sections should be followed by “of the Act” on each occasion in the new regulations 14A and 15A to ensure clarity and consistency with the remainder of the 1979 Regulations.

4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In the new regulation 15A to be inserted into the 1979 Regulations by regulation 7, several references are made to section numbers, but the word “section” is missing on numerous occasions.

5. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

In the new regulation 14A(2), to be inserted into the 1979 Regulations by regulation 5, the word “shall” is used. “Shall” is ambiguous because it can be used to refer to the future, to impose obligations, or in a declaratory sense. Although it could be used to maintain consistency of terminology with the rest of the 1979 Regulations, similar wording in the new regulation 14A(1) uses the word “must”, which provides greater clarity for the reader.

Similarly, in the new regulation 15A(2) and (3) which is inserted by regulation 7, there are declaratory statements that “the prescribed period for claiming expenses reasonably incurred... will be eighteen months”. However, by contrast, in the new regulations 4A(1), 13A(1) and 15A(4), the wording states that “the prescribed period is...” which provides greater clarity. Therefore, the use of “will be” in the drafting of the new regulation 15A(2) and (3) lacks clarity and is also inconsistent with the approach to the other textual amendments when prescribing periods of time.

6. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In the new regulation 14A(2) and (3), and regulation 15A(2) inserted by regulations 5 and 7 respectively, there are periods of time that are described as “beginning on the day”. However, the Welsh Government’s drafting guidelines, Writing Laws for Wales, state that periods of time should not be described as “beginning on” because it can create doubt as to the exact time on the day when the period of time begins. The guidelines recommend describing periods of time as “beginning with the day”. Therefore, the drafting of these



textual amendments does not follow the Welsh Government's own drafting guidelines when describing the beginning of periods of time.

7. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In paragraph 5b of the new Form 1A set out in Schedule 1 to the Regulations, reference is made to "regulation 15A(4)", however no information is given as to what regulations are being referred to. Although Form 1A will be found in the 1979 Regulations, in practice it will be used by people in isolation, not as part of the 1979 Regulations, and therefore the user will have no reference point to determine what "regulation 15A(4)" says.

It should also be noted that no definition is given in the forms for "the Act" or "the NRBW", which again, due to the manner in which these forms will be used in practice, may make matters confusing for the reader and is inconsistent with the approach taken in the existing forms in the 1979 Regulations.

There are also incomplete references in both Form 1A and Form 9A, where sections numbers are cited but are not followed by any reference to an Act. This is inconsistent with the wording of the existing forms in the Schedules to the 1979 Regulations and lacks clarity for the reader.

8. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

In the new Form 1A, it does not appear to be possible for both paragraphs 6 and 7 to apply at the same time, as paragraph 6 seeks confirmation that no other notice has been given yet paragraph 7 asks for details of other notices that have been given. It appears that these paragraphs should have been drafted as alternatives and the user be invited to delete as appropriate, as is the case in other parts of the form.

9. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

In the new Form 9A, in paragraph 1, the appellant is required to enter the relevant section number of the notice where it states "under Section.... [enter section here] of the Forestry Act 1967." However, in paragraph 4 of the same Form and in paragraph 1 of the new Form 1A, the different section numbers are listed for the user to delete as appropriate which seems to make the form easier to complete. Therefore, this requires clarification as to why paragraph 1 has been drafted in a different way from those other provisions and which makes it more difficult for the claimant to complete the form.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.



Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 6 November 2023 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee