



Llywodraeth Cymru  
Welsh Government

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Welsh Government  
Consultation – summary of response

## Changes to the Forestry (Felling of trees) Regulations 1979

Summary of responses to the consultation on Changes to the Forestry (Felling of Trees) Regulations 1979 due to amendments to the Forestry Act 1967 made by the Agriculture (Wales) Bill 2023 and Welsh Government Response

12 October 2023

## **Overview**

The Welsh Government held a consultation on the changes to the Forestry (Felling of Trees) Regulations 1979 (“the 1979 Regulations”). These changes were necessary to support the amendments made to the Forestry Act 1967 by virtue of the Agriculture (Wales) Act 2023 (“the 2023 Act”), which allows environmental conditions to be added to felling licences, and enables the amendment, suspension or revocation of felling licences already granted. These changes to the 1979 Regulations are necessary to enable the amendments to the Forestry Act 1967 to function effectively.

This document provides a summary of responses to the consultation and shows how the Welsh Government is responding to them. It does not offer a detailed opinion on individual comments.

The Welsh Government is grateful to all those who took the time to submit their views.

## **Action Required**

This document is for information only.

## **Further information and related documents**

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

## **Contact details**

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## **Additional copies**

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

Link to the consultation documentation: [Changes to the Forestry \(Felling of trees\) Regulations 1979 | GOV.WALES](#)

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## **Introduction**

The Agriculture (Wales) Act 2023 (“the 2023 Act”) received Royal Assent and became law on 17 Aug 2023. This contained forestry provisions that made amendments to the Forestry Act 1967 (“the 1967 Act”) providing powers to enable environmental conditions to be added to felling licences, and to amend, suspend or revoke felling licences already granted. This is to prevent felling that would contradict other environmental legislation, and provide further protection for wildlife and the environment during felling operations.

The Forestry (Felling of Trees) Regulations 1979 (“the 1979 Regulations”) make provision for various procedural matters under the 1967 Act, and, therefore, need to be amended to support the new amendments made to that Act.

This document provides a summary of the consultation responses provided by stakeholders on the changes to the 1979 Regulations. Welsh Ministers will use the consultation responses to inform next steps in taking forward new amending regulations, the working title being the Forestry (Felling of trees) (Amendment)(Wales) Regulations 2023. These will be published in both Welsh and English.

## **Consultation**

The Welsh Government undertook a consultation in order to finalise the details needed in subordinate legislation (changes to the 1979 Regulations) to implement the forestry provisions of the 2023 Act. The proposed forestry amendments to the 1967 Act had already been part of a public consultation on the Agriculture (Wales) White paper in late 2020. A Welsh Government consultation on the proposed changes to the 1979 Regulations was held between 11 August 2023 and 8 September 2023. This consultation was shorter than usual due to it being targeted at relevant stakeholder representatives only. This allows amending regulations to be made sooner, enabling the forestry sector extra time to prepare for the new changes to the 1967 Act. A longer consultation would have made the preparation time shorter.

The consultation was targeted at the selected stakeholder group who had already been involved in the development of the forestry provisions. This was a group of representatives of wider stakeholders, made up of 5 stakeholders representing forestry, 6 representing the land sector and 4 representing the conservation sector. However this did not prevent the wider forestry sector or public taking part in the consultation.

The consultation proposals examined 3 issues relating to prescribed periods and prescribed manner, arising from the amendments to the 1967 Act. These were only a small part of the wider forestry provisions of the 2023 Act which were consulted on previously.

A consultation document was made available in Welsh and English on the Welsh Government website. Alongside the opportunity to respond online, by email or by post, Welsh Government also held a stakeholder engagement session by Microsoft Teams on 6 September. This included an overview of the timing and reasons for the

consultation, an explanation of the consultation questions and the opportunity for discussion.

## **Summary of Responses**

Welsh Government received 9 responses to the consultation and would like to thank all those who responded.

This document summarises the responses to the consultation questions. It does not aim to capture every point raised by respondents. It looks to present the key recurring themes and issues and provides a response from the Welsh Government.

The consultation document asked 6 questions. The first 3 were specific questions relating to the 4 procedural instances identified in the forestry provisions of the 2023 Act, that required amendment to the 1979 Regulations. Two questions related to the effects of the proposed amendments on the Welsh language. The last question invited any further related issues to be raised. Not all respondents answered each question. A number of the issues raised in the last question related to the forestry provisions of the 2023 Act which amended the 1967 Act rather than the changes to the 1979 regulations which is the subject of this consultation, although the two are very closely linked.

### **Question 1 - Do you agree that the prescribed period should be 1 month in line with current requirements under the Forestry Act 1967? If not, what prescribed period do you feel is appropriate and why?**

This related to the time in which a local authority who made a Tree Preservation Order (“TPO”) (“the TPO authority”) must respond to Natural Resources Wales’s (NRW’s) notice in writing if the TPO authority wished to object to proposals to amend a felling licence through mutual agreement with the felling licence holder, or to serve a notice under the new provisions of the 1967 Act. The proposed prescribed period of 1 month was in line with existing provision in the Forestry Act 1967 (“the 1967 Act”) for a similar instance where felling licence applications relate to trees covered by a TPO.

All responses answered this question. 8 respondents agreed with the proposed prescribed period: 1 disagreed.

Key points made:

- The 1 month period was already extended on occasions through requests for clarification or acceptance by NRW of late responses, and that a strict cut-off point was needed to avoid disruption to felling operations (2 respondents).
- Concerns raised that local authorities may not have the capacity to respond the 1 month/4 week period (2 respondents, both of whom had agreed the proposed 1 month period).
- Suggestions that the 1 month period be increased to 8 weeks in line with other general consultation response times for similar requests (2 further respondents, both had agreed the proposed 1 month prescribed period).
- The Pembrokeshire Coast National Park disagreed that 1 month was sufficient, listing the steps required to respond to such a request from NRW and that a 6 week period was preferable.

## Welsh Government response

The concern around whether some local authorities have resources to respond within the proposed 1 month prescribed period is noted. Current requests to TPO authorities was around 3% of felling licence applications last year. Requests by NRW under the new powers is likely to be even less, so is unlikely to be a particular burden on TPO authorities. Extending the prescribed period to 6 or 8 weeks needs to be balanced against the resulting delay in amending felling licences and the related impact on felling operations.

NRW is already committed to a 60 day turn-around period for amending licences and permits in other regulatory regimes. A proposal to extend this to the felling licence regime has been discussed with the stakeholder group working with NRW on their external guidance on the implementation of the new provisions in the 1967 Act. Extending the prescribed period for local authorities to respond would make it difficult to deliver on this 60 day commitment. There is also merit in maintaining consistency within the 1967 Act.

In consideration of the above points, Welsh Ministers will set the prescribed period at 1 month in which a TPO authority must respond to NRW's notice in writing if that TPO authority wishes to object. This applies to both new sections 10A(3) and 24F(4) of the 1967 Act, inserted by virtue of sections 38 and 40 of the 2023 Act.

### **Question 2: Do you agree with the prescribed manner and that the prescribed period should be 3 months with extension where a notice relates to a suspension? If not, what prescribed manner or period do you feel is appropriate and why?**

This related to the prescribed period and prescribed manner in which someone could appeal against a notice served under the amendments to the 1967 Act. The prescribed period and manner mirrored existing provision within the 1967 Act, with a proposal in relation to notices to suspend a licence, to provide that such a prescribed period extends to the whole period of the suspension. This is intended to give a person a right of appeal to have the suspension lifted early, which could be after the initial 3 month prescribed period.

Six of the 9 respondents answered this question. Five respondents agreed the prescribed period; the remaining respondent commented that it was not directly applicable to their organisation. Two respondents referred to the extension of the prescribed period in relation to suspension notices, with one in agreement, and the other asking for further clarification. One respondent supported the prescribed manner; no other respondents mentioned it or opposed it.

Confor flagged that information needed to be made available about the appeal process in terms of appeal timescale, process and evidence required. Also that the appeal timescale needed to be expedited to minimise any cost/impact on felling operations.

## Welsh Government response

The positive comments and support for the proposed prescribed period and prescribed manner are noted. Welsh Ministers will set the prescribed period and prescribed manner as proposed.

As set out in the consultation document, the prescribed period where a notice relates to a suspension notice is for the length of the suspension period. This is to enable the person to whom the notice relates to appeal to have the suspension lifted earlier than the period set out in the notice, which may be longer than the prescribed period for appeals of 3 months. Welsh Ministers note the comments relating to the need for further information on the appeals process.

### **Question 3: Do you agree with the prescribed manner and that the prescribed period should be 3 months? If not, what prescribed manner or period do you feel is appropriate and why.**

This related to the prescribed period and prescribed manner for claims for compensation to be made. The proposed prescribed period was 3 months from the date of the Minister's decision sent to the appellant confirming a successful appeal. The prescribed manner was by serving a claim form on NRW.

Six respondents answered this question. Four respondents agreed; 2 respondents (Confor and Institute for Chartered Foresters (ICF)) disagreed the prescribed period. One respondent who agreed also flagged that while the proposed prescribed period looked reasonable, consideration was needed to be able to calculate the compensation amount.

Key points made by both Confor and ICF were as follows:

- Not clear what impact an obstruction (such as a notice to amend, suspend or revoke a felling licence) will have on felling operations in terms of delays.
- It could feasibly be 12 months before felling operations are restarted and completed as delays may cause the felling window to be missed/delayed until the next felling window.
- Only once felling operations have been resumed and completed will the full extent of costs to inform a compensation claim be known.
- Delays may impact the viability of the felling operation e.g. where a felling licence has a commercial value which could be undermined if that licence can't be relied on.
- A claim should be allowed to be submitted for up to 3 months post completion of the felling of the area for which a successful appeal is made.
- Recommend a claim period of up to 12 months from a successful appeal.
- Recommend further clarification to justify how much compensation paid and what situations.

## Welsh Government response

The comments and points made are noted and welcomed as a valuable contribution to the amendments of the 1979 Regulations. Welsh Ministers agree that a longer prescribed period is needed and will set this at 18 months from the day after the day on which the Minister's notification of a successful appeal outcome is sent to the appellant. This allows up to 12 months to resume and complete the felling operation affected by the notice, with additional time for potential slippage of resumption of operations and to collate evidence of the costs required for a compensation claim. It is not proposed that the regulations will break the time period down in this way and will simply indicate the 18 month period. The prescribed manner will be as proposed, by way of submitting a claim form to NRW.

Welsh Ministers also note the need for clear guidance on the compensation claims process and will consider this with NRW.

**Question 4: What, in your opinion, would be the likely effects of the amendments on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English. Do you think that there are opportunities to promote any positive effects? Do you think that there are opportunities to mitigate any adverse effects?**

**Question 5: In your opinion, could the amendments be formulated or changed so as to: - have positive effects or more positive effects on using the Welsh language and on not treating the Welsh language less favourably than English; or - mitigate any negative effects on using the Welsh language and on not treating the Welsh language less favourably than English?**

Four respondents answered question 4. Two respondents flagged that associated documentation should be produced bilingually; another respondent was unsure on the likely effects on the Welsh language. Confor flagged concerns that the impact of the amendments to the 1967 Act made by the 2023 Act would significantly impact (reduce) woodland management in particular in relation to small woodlands. This decline in woodland management would reduce job availability for forest workers, many being 1<sup>st</sup> language Welsh speakers. Confor also flagged that there were no opportunities to mitigate this impact.

Two respondents answered question 5. One flagged that the associated documentation should be produced bilingually; another flagged that there were no ways the amendments to the 1979 Regulations could be changed to either promote or mitigate effects on the Welsh language.

## Welsh Government response

All associated documents will be produced bilingually in line with Welsh Government commitments to the Welsh language.

The concern outlined above in relation to Welsh forestry jobs is noted. Welsh Ministers issued a non-statutory guidance "Principles of Implementation" on NRW



which sets out how they expect NRW to use the new powers arising from the amendments to the 1967 Act. This acknowledges that overuse of the new powers to impact on woodland management which would be detrimental to Welsh Government's objectives of bringing more woodland into management. The non-statutory guidance places emphasis on appropriate, proportionate and reasonable use of the new powers by NRW, and their use should be fully justified. It provides the basis for the development of external guidance on how NRW will use the powers.

NRW is working with stakeholders to develop clear external guidance on how the powers will be implemented, which is based on the Principles set out in the Welsh Government non-statutory guidance. NRW is also developing internal guidance to ensure consistency. The new powers provide for an appeal process with a right to compensation where an appeal is successful. 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.

**Question 6: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.**

Four respondents provided information for this question.

This consultation was on the procedural changes needed to the 1979 Regulations to enable the amendments to the 1967 Act to function. However many of the points raised focused on the amendments to the 1967 Act themselves. These are summarised, along with the response from Welsh Government as follows:

- The process for NRW consulting local authorities on forestry matters has significantly improved and is welcomed. Further points to improve the process include a direct contact within NRW for local authorities to discuss general TPO and felling licence enquiries, and to consider meetings between NRW and local authority tree officers to improve communications and understanding of the processes on both sides.

Response - We have passed on the above comments and suggestions on continually improving communications with local authorities to NRW.

- Query rationale for introducing powers to amend, suspend or revoke felling licences and feel that legislation will impact negatively on the economy and environment. Evidence of the issues are needed to reassure the sector that the regulator will act fairly.

Response - The rationale for the amendments to the 1967 Act was set out in the Explanatory Memorandum for the 2023 Act at pages 65-79 and can be found at [agriculture-wales-act-2023-explanatory-memorandum.pdf \(gov.wales\)](#). This sets out the issues to be addressed by the amendments to the 1967 Act.

- The approach to changes to the 1967 Act, including the proposals to form the Forestry (Felling of Trees) (Amendment)(Wales) Regulations 2023 requires further consideration, with thorough sector consultation, to ensure that the amendments deliver against needs and complement developments within the agricultural sector.
- Not clear where professional input has been sought in the development of the proposed amendments to the 1967 Act. More discussion is needed around the practical implementation of the new powers.

Response - We consulted on the proposed amendments to the 1967 Act as part of the Agriculture (Wales) White paper which ran from 16 Dec 2020 to 25 March 2021. Their subsequent development involved the engagement of a stakeholder group of representatives of the forestry, land and conservation sectors who provided valuable input. This group also provided input and scrutiny to the costs benefit analysis of the Regulatory Impact Assessment of the 2023 Act. This stakeholder group continues to engage with NRW in the development of their external guidance on how the new powers will be implemented, and work on this is on-going.

- Concern at the insufficient time allocated to drafting documentation and enable full stakeholder engagement, with short consultation periods and low visibility to stakeholders.

Response - By necessity, work on the new powers is having to proceed at pace in order to ensure documentation and processes are in place for the commencement of the new powers in 2024. We appreciate the pressure this places on stakeholders to respond and appreciate their on-going patience and value their engagement.

- Reiterate the recommendation that the commencement of the new powers be deferred until after 30 March 2023.

Response - In response to stakeholder feedback, Welsh Ministers have agreed to defer the commencement of the new powers until 1 April 2024.

- Welsh Government should carefully consider how notifications will be delivered and the ICF would welcome discussion on this.
- Clarification is needed on how purchasers will be notified of breaches attached to felling licences.

Response - Serving notices and clarification on accessing information on breaches to felling licences are practical issues and should form part of the external guidance being developed by NRW. These issues can be discussed between NRW and the stakeholder group, of which ICF is a member.

- Welsh Government should provide evidence of measurable improvement to biodiversity resulting from the changes to the 1967 Act.

Response - Biodiversity and environmental benefits are expected to increase as a result of the provision to add environmental conditions, as the aim is to reduce environmental harm and provide better protection for wildlife. However these benefits are challenging to quantify or express in monetary terms given the variable nature of felling licences in terms of frequency, scale and individual site conditions. It is proposed that relevant data will be collected to monitor the benefits as part of a post implementation review of the legislation.

- ICF welcome further engagement with Welsh Government and NRW on the new provisions in the 1967 Act particularly as the detail is developed and offer to convene an advisory group from ICF Welsh membership.

Response - We welcome the ICF's willingness to continue to engage with ourselves and NRW on the ongoing development of the new powers and associated processes.

## **Next Steps**

The responses to this consultation have provided valuable input and is reflected in the Welsh Government responses. These points will be considered by Welsh Ministers in taking forward the drafting of the amendments to the 1979 Regulations, by way of the Forestry (Felling of Trees) (Amendments)(Wales) Regulations 2023.

Welsh Government would like to thank all those who responded to this consultation.