

SL(6)517 – The Historic Environment (Wales) Act 2023 (Consequential Provision) (Secondary Legislation) Regulations 2024

Background and Purpose

These Regulations make amendments to secondary legislation that are consequential to the Historic Environment (Wales) Act 2023 (“the 2023 Act”), which is the first consolidation Act in the Welsh Government’s programme to improve the accessibility of Welsh law. The Regulations mainly update references to old legislation now restated in the 2023 Act. They also reflect changes in terminology described in paragraph 22 of the Drafters’ Notes to the 2023 Act¹.

These Regulations do not form part of the code of law relating to the historic environment in Wales, but they amend some existing regulations to make them part of the historic environment code.

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 11 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 2, the provision appears to amend the text of an earlier version of Schedule 2 to the Forestry (Felling of Trees) Regulations 1979, which has been amended by other statutory instruments. Regulation 2 amends the earlier version and not the new Schedule 2, which specifies the particulars that must be included with any application for a felling licence. Therefore, the amendment made by regulation 2 should state “in paragraph (i)” rather than “in paragraph (4)(i) of the Notes” to correctly identify the location of the words in the existing text in Schedule 2 to the Forestry (Felling of Trees) Regulations 1979.

¹ [ascod_20230003_en_001.pdf \(legislation.gov.uk\)](#)



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

Regulations 3 and 4 make amendments to the Ancient Monuments (Applications for Scheduled Monument Consent) Regulations 1981 (“the 1981 Regulations”) and the Ancient Monuments (Class Consents) Order 1981 (“the 1981 Order”) respectively. In both instances, the amendments are made to provisions that have been revoked, subject to saving provisions. In the case of the 1981 Regulations, the revocation does not apply to applications made before 31 May 2017. In the case of the 1981 Order, the revocation does not have effect in respect of works commenced before the Order which made the revocation came into force, which was 14 June 1994. Given the time that has elapsed since the dates specified in the saving provisions, clarification is requested as to why it was necessary to make the amendments specified in Regulations 3 and 4 and what their effect is in practical terms.

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

Regulation 6 amends article 1(2) of the Areas of Archeological Importance (Notification of Operations) (Exemption) Order 1984 to omit the words “and Wales”. However, Article 1(2) does not include the words “and Wales”. It appears that the words to be omitted should be “or Wales”.

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

In regulation 16(b), in the new text that will be inserted into article 7 of the Town and Country Planning (General Permitted Development) Order 1995, there is wording missing from the description of section 76(1) of the Historic Environment Wales) Act 2023. The description should be “(duty to maintain and publish list of buildings)” (our emphasis), as has been used in regulation 127(f).

A similar issue arises in relation to regulation 69, where reference is made to the heading of paragraph 2(6) of Schedule 9 to the 2023 Act, which should read “(action to be taken by Welsh Ministers on rejection of purchase notice by planning authority)” (our emphasis). The same point arises in regulation 135(b).

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

In regulations 32, 71, 87, 95, 114 and 126, it appears that there should also be a further amendment made to the heading of the respective individual regulations that are being amended, to add the word “and code”. This is because a new provision has been inserted stating that the statutory instrument now forms part of a code of law. This has been done in the other new statutory instruments that have been made in relation to the Historic Environment Act 2023 such as S.I. 2024/932 (W. 156), therefore it would be helpful to understand why this has not been done in relation to the instruments that are being amended.



6. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 47, in the Welsh text, the amendment does not succeed in its intended effect because the new definition of “scheduled monument” has been defined bilingually in section 3(7) of the Historic Environment (Wales) Act 2023. Therefore, the existing words “a roddir i “scheduled monument”” also need to be amended in the Welsh text of paragraph (f) in the definition of “sensitive area” in regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009. Those additional words were necessary in the existing text because “scheduled monument” was defined in English only in the Ancient Monuments and Archaeological Areas Act 1979.

This issue also occurs in the amendments made by regulation 61 and 76(a) of these Regulations.

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

Regulation 63(c) inserts new definitions into the Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014. However, after each term that is defined, the corresponding language definitions have been omitted.

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

Regulation 64 amends the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. The amendment omits the entry for the Ancient Monuments and Archaeological Areas Act 1979 in the table in Schedule 2 and replaces it with an entry for the 2023 Act. All other entries in that table are in chronological order, yet the entry for the 2023 Act is now listed in between legislation from 1976 and 1980, which may make it difficult for the reader to locate. It would assist to receive an explanation as to why the entry for the 2023 Act was not moved to the end of the table to maintain the chronological order.

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

Regulation 99 inserts a new provision into the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 (“the 2017 Regulations”). This provision states that paragraphs (1) to (7) of regulations 4 and 5 of the 2017 Regulations do not apply in specified circumstances. However, regulation 5 of the 2017 Regulations does not have any numbered paragraphs. It appears that the amendment in regulation 99 should make it clear that regulation 5 of the 2017 Regulations does not apply in its entirety in order to avoid confusion.



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

Regulation 130 amends the Listed Buildings (Review of Listing Decisions) (Wales) Regulations 2017. It makes substitutions for the words “section 2A of the 1990 Act” in regulations 6(2) and 7(2)(c) of those regulations. However, regulation 7(2)(c) does not include the specified wording. It is believed that the correct reference should be to regulation 7(2)(b).

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

Throughout the Regulations, an inconsistent approach has been taken to the drafting style, including:

- in some instances, where the Regulations amend provisions with conjunctions at the end, it is not clear whether those conjunctions are to remain or not – some make it clear by using terms such as “but not the “or” after it” in relation to the amendment, whereas others, for example the amendment in regulation 106, do not;
- references vary throughout between “section 3” and “section 3(7)” of the Historic Environment Act 2023 when defining the term “scheduled monument”; and
- the divisions within definitions found in the statutory instruments are continually incorrectly described as “sub-paragraphs” but they should be correctly described as “paragraphs”.

Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

12. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd

It is noted that many of the provisions of the 2023 Act referred to in these Regulations were not in force on the date that these Regulations were made. However, in accordance with the Historic Environment (Wales) Act 2023 (Commencement) Order 2024, the remaining provisions of the 2023 Act (except section 147, which is not referenced in these Regulations) will come into force on 4 November 2024, the same date on which these Regulations come into force.

13. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

These Regulations were not subject to any consultation. The Explanatory Memorandum states that:

No consultation has been undertaken on the regulations, as they reflect current policy and restate current procedures.



Welsh Government response

A Welsh Government response is required for all technical reporting points.

Legal Advisers

Legislation, Justice and Constitution Committee

25 September 2024



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee