

SL(5)257 – The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018

Background and Purpose

Land may be registered as a town or village green in the circumstances specified in section 15 of the Commons Act 2006 (“the 2006 Act”). A characteristic of each of those circumstances is that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, must have indulged ‘as of right’ in lawful sports and pastimes on the land in question for a period of at least 20 years.

Section 15A(1) of the 2006 Act permits the owner of such land to deposit with the commons registration authority a statement, the effect of which is to bring to an end any period during which persons have indulged as of right in lawful sports and pastimes on the land to which the statement relates. The statement must be accompanied by a map.

These Regulations make provision in respect of the deposit of statements under section 15A(1) of the 2006 Act and associated matters.

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(i) - that there appears to be doubt as to whether it is intra vires

Statements deposited by landowners¹ with commons registration authorities under these Regulations must include the landowner’s name, address, telephone number and e-mail address. The statements are then included on public registers which commons registration authorities across Wales are required to keep in both electronic and paper form.

This means that, where the landowner is only able to supply a home address, a home or personal telephone number and a personal e-mail address, those personal details will be publicly available for anyone to see.

This is an interference with the privacy rights of landowners under Article 8 of the European Convention on Human Rights. Article 8 is a qualified right, meaning interference with Article 8 is capable of being justified.

However, the Explanatory Memorandum provides no justification for including personal details such as home addresses, home or personal telephone numbers and personal e-mail addresses in a public register. While there may be sound reasons for including such personal information on a public register in the particular context of these Regulations, the lack of justification leaves the Committee with little choice but to question whether there is a breach of Article 8 rights. Consequently, we have little choice but to raise the question as to whether the Regulations are intra vires.

¹ The issues we raise in this report in respect of landowners applies equally to those depositing statements on behalf of landowners.



We ask the Welsh Government to set out its justification by reference to the following four questions, i.e. the four questions used by the Supreme Court in a series of cases (including *R (on the application of Tigere) v Secretary of State for Business, Innovation and Skills*²) when deciding questions of justification.

The four questions are:

1. does the measure have a legitimate aim sufficient to justify the limitation of a fundamental right;
2. is the measure rationally connected to that aim;
3. could a less intrusive measure have been used; and
4. bearing in mind the severity of the consequences, the importance of the aim and the extent to which the measure will contribute to that aim, has a fair balance been struck between the rights of the individual and the interests of the community?

On the subject of consultation around this issue, we note paragraph 3.3 of the [Welsh Government's summary of consultation responses](#) which states that "a number" of consultation respondents "suggested additional information which could be included [in the landowner statement], such as...The email address and telephone number of the landowner(s)".

However, it is unclear whether respondents understood that anything they suggested should be included in the statement deposited by landowners to commons registration authorities would then also be included in the public register. Further, it is unclear whether respondents understood that this could lead to personal information such as a home telephone number, a mobile telephone number and a personal e-mail address being included in a public register.

In this regard, we also note—

1. that the direct question of what additional information should be included in the register (i.e. consultation question 4) did not seem to result in anyone suggesting that the register should include the email addresses and telephone numbers of landowners, and
2. as a result, that paragraph 5.7 of the Explanatory Memorandum seems to over-simplify the issue.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. 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 Assembly

We note there is a conflict between the system for registering town and village greens and the planning system, and that the Welsh Government has identified this as "problematic, given registration can be used solely as a means to frustrate or prevent lawful development proposed and approved via the planning process."³

Implications arising from exiting the European Union

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

² [2015] UKSC 57

³ See paragraph 1.2 of the [Consultation Document](#)



Government Response

The Welsh Government notes and accepts the comments made in respect of Article 8 of the European Convention on Human Rights, and therefore undertakes to make an amending statutory instrument as soon as practicable.

Legal Advisers

Constitutional and Legislative Affairs Committee

28 September 2018

