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WELSH STATUTORY INSTRUMENTS

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**2004 No. 3157 (W.274)**

**TOWN AND COUNTRY PLANNING, WALES**

**The Town and Country Planning (Electronic Communications) (Wales) (No. 2) Order 2004**

*Made* - - - - - *30 November 2004*

*Coming into force* - - - - - *1 January 2005*

WHEREAS the National Assembly for Wales, having considered that its authorisation by this Order of the use of electronic communications for any purpose is such that the extent, if any, to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made of electronic communications than in other cases

NOW THEREFORE, the National Assembly for Wales, in exercise of the powers conferred by sections 8, 9 and 10 of the Electronic Communications Act 2000<sup>(1)</sup>, and with the consent of the Secretary of State for Wales<sup>(2)</sup>, hereby makes the following Order:

**Citation, commencement and application**

1.—(1) This Order may be cited as the Town and Country Planning (Electronic Communications) (Wales) (No. 2) Order 2004 and comes into force on 1 January 2005.

(2) This Order applies to land in Wales.

**Amendment of regulations relating to planning appeals**

2. The Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003<sup>(3)</sup> are amended in accordance with Schedule 1 to this Order.

**Amendment of regulations relating to enforcement notices and appeals**

3.—(1) The Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003<sup>(4)</sup> are amended in accordance with Schedule 2 to this Order.

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(1) 2000 c. 7. For the purposes of this Order, by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253) (W.5), the National Assembly exercises the relevant functions in, or under, the Town and Country Planning Act 1990 (c. 8) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9).

(2) See section 10(5) of the Electronic Communications Act 2000 (c. 7).

(3) S.I. 2003/390 (W.52).

(4) S.I. 2003/394 (W.53).

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(2) The Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003<sup>(5)</sup> are amended in accordance with Schedule 3 to this Order.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998<sup>(6)</sup>.

30 November 2004

*John Marek*  
The Deputy Presiding Officer of the National  
Assembly

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<sup>(5)</sup> S.I. 2003/395 (W.54).  
<sup>(6)</sup> 1998 c. 38.

SCHEDULE 1

Article 2

**Amendment of the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003**

1. Renumber regulation 2 (interpretation) as regulation 2(1) and, in the definition of “questionnaire” contained therein, after the word “Regulations”, insert—

“; and, for this purpose, a form is taken to be supplied where the National Assembly has published it on a website and has notified the local planning authority of—

- (a) publication of the form on the website;
- (b) the address of the website; and
- (c) the place on the website where the form may be accessed and how it may be accessed”.

2. After regulation 2(1), add—

“(2) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically,—

(a) the expression “address” includes any number or address used for the purposes of such communications, except that, where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation is not fulfilled unless the person on whom it is imposed provides a postal address;

(b) references to notices, representations or other documents, or to copies of such things, include references to such things or copies of them in electronic form;

(3) Paragraphs (4) to (7) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any statement, notice or other document to any other person (“the recipient”).

(4) The requirement will be taken to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(5) In paragraph (4), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Where the electronic communication is received by the recipient outside the recipient’s business hours, it will be taken to have been received on the next working day; and, for this purpose, “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

(7) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (4); and “written” and cognate expressions are to be construed accordingly.”.

3. In regulation 3 (application of the Regulations), after paragraph (2), add—

“(2A) Where an appellant (or, as the case may be, the appellant and the local planning authority) so informs the National Assembly using electronic communications, the appellant will be taken to have agreed—

- (a) to the use of such communications for all purposes of these Regulations relating to the appeal which are capable of being carried out electronically;

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- (b) that the appellant’s address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the appellant’s communication so informing the National Assembly; and
- (c) that the appellant’s deemed agreement under this paragraph will subsist until the appellant gives notice in accordance with regulation 12A of a wish to revoke the agreement,

and the references in paragraphs (1) and (2) of this regulation to an appeal being disposed of on the basis of written representations will not be taken to preclude the use of electronic communications in accordance with this paragraph and regulation 2.”.

4. In regulation 7 (representations), at the end, add—

“(9) Where a party to which this regulation applies elects to use electronic communications for submitting, sending, copying, or sending a copy of any representations, questionnaire or other document, this regulation has effect subject to the following modifications—

- (a) where the party so electing is the local planning authority, the words “2 copies of” in paragraphs (3) and (7) are omitted;
- (b) where the party so electing is the appellant, the words “2 copies of” in paragraphs (4) and (7) are omitted”.

5. For regulation 12 (transmission of documents), substitute—

“12. Notices or documents required or authorised to be sent or supplied under these Regulations may be sent or supplied by—

- (a) post; or
- (b) using electronic communications to transmit the notice or document (as the case may be) to a person at such address as may for the time being be specified by that person for such purpose.”.

6. After regulation 12, insert—

**“Withdrawal of consent to use of electronic communications**

**12A.** Where a person is no longer willing to accept the use of electronic communications for any purpose under these Regulations which is capable of being effected electronically, that person must give notice in writing—

- (a) withdrawing any address notified to the National Assembly or to a local planning authority for that purpose; or
- (b) revoking any agreement entered into with the National Assembly or with a local planning authority for that purpose,

and such withdrawal or revocation will be final and will take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given.”.

SCHEDULE 2

Article 3(1)

**Amendment of the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003**

1. Renumber regulation 2 (interpretation) as regulation 2(1) and, before the definition of “enforcement notice” contained therein, insert the following definition—

““electronic communication” (“*cyfathrebu electronig*” and “*cyfathrebiad electronig*”) has the meaning given in section 15(1) of the Electronic Communications Act 2000(7);”.

2. In regulation 4 (explanatory note to accompany copy of enforcement notice), at the end of sub-paragraph (a)(ii), insert—

“; or, where electronic communications are used to send such notice to the National Assembly, by sending the notice to it at such time that, in the ordinary course of transmission, it would be delivered to the National Assembly before that date”.

3. After regulation 9 (notice of receipt of all required documents), insert—

#### **“Use of electronic communications**

**9A.**—(1) Paragraphs (2) to (6) of this regulation apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in Part 3 of these Regulations to give or send any statement, notice or other document to any other person (“the recipient”).

(2) The requirement will be taken to be fulfilled where the document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(3) In paragraph (2), “legible in all material respects” means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(4) Where the electronic communication is received by the recipient outside the recipient’s business hours, it will be taken to have been received on the next working day; and, for this purpose, “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

(5) A requirement that any notice or other document should be in writing is fulfilled where that document meets the criteria in paragraph (2); and “written” and cognate expressions are to be construed accordingly.

(6) Where a person makes an appeal to the National Assembly under regulation 6 using electronic communications, the person will be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the appeal which are capable of being carried out electronically;
- (b) that the appellant’s address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the appellant’s statement of appeal;
- (c) that the appellant’s deemed agreement under this paragraph will subsist until the appellant gives notice in accordance with regulation 12A of a wish to revoke the agreement.”.

4. For regulation 12 (transmission of documents), substitute—

#### **“Transmission of documents**

**12.** Notices or documents required or authorised to be served, sent or supplied under these Regulations may be served, sent or supplied by—

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(7) 2000 c. 7.

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- (a) post; or
- (b) using electronic communications to serve, send or supply the notice or document (as the case may be) to a person at such address as may for the time being be specified by the person for that purpose.”.

5. After regulation 12, insert—

**“Withdrawal of consent to use of electronic communications**

**12A.** Where a person is no longer willing to accept the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically, that person must give notice in writing—

- (a) withdrawing any address notified to the National Assembly or to a local planning authority for that purpose; or
- (b) revoking any agreement entered into with the National Assembly or with a local planning authority for that purpose,

and such withdrawal or revocation will be final and will take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given.”.

SCHEDULE 3

Article 3(2)

**Amendment of the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003**

1. Renumber regulation 2 (interpretation) as regulation 2(1) and—

- (a) after the definition of “document” contained in that regulation, insert the following definition—

““electronic communication” (cyfathrebu electronig” and “cyfathrebiad electronig”) has the meaning given in section 15(1) of the Electronic Communications Act 2000(8);”;

- (b) in the definition of “questionnaire” contained in that regulation, after the word “Regulations”, insert—

“; and, for this purpose, a form is taken to be supplied where the National Assembly has published it on a website and has notified a local planning authority of—

- (a) publication of the form on the website;
- (b) the address of the website; and
- (c) the place on the website where the form may be accessed and how it may be accessed;”.

2. After regulation 2(1), add—

“(2) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being carried out electronically,—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation

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(8) 2000 c. 7.

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is not fulfilled unless the person on whom it is imposed provides the required postal address;

- (b) references to notices, representations or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(3) Paragraphs (4) to (7) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in regulations 4 to 8 of these Regulations that representations or other documents should be sent or submitted to any other person (“the recipient”).

(4) The requirement will be taken to be fulfilled where the document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(5) In paragraph (4), “legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Where the electronic communication is received by the recipient outside the recipient’s business hours, it will be taken to have been received on the next working day; and, for this purpose, “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

(7) A requirement in these Regulations that any notice or document should be in writing is fulfilled where that document meets the criteria in paragraph (4); and (except in regulation 5) “written” and cognate expressions are to be construed accordingly.”.

**3.** In regulation 3 (application of these Regulations), after paragraph (2), insert—

“(2A) Where an appellant (or, as the case may be, the appellant and the local planning authority) so informs the National Assembly using electronic communications, the appellant will be taken to have agreed—

- (a) to the use of such communications for all purposes of these Regulations relating to the appeal which are capable of being carried out electronically;
- (b) that the address provided by the appellant for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that person’s communication so informing the National Assembly; and
- (c) that the appellant’s deemed agreement under this paragraph will subsist until notice is given in accordance with regulation 11A of a wish to revoke the agreement,

and the references in paragraphs (1) and (2) of this regulation to an appeal being disposed of on the basis of written representations will not be taken to preclude the use of electronic communications in accordance with this paragraph and regulation 2.”.

**4.** In regulation 7 (representations), at the end, add—

“(9) Where a party to which this regulation applies elects to use electronic communications for submitting, sending, copying or sending a copy of any representations, questionnaire or other document, this regulation has effect subject to the following modifications—

- (a) where the party so electing is the appellant, the words “2 copies of” in paragraphs (3) and (7) are omitted;

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- (b) where the party so electing is the local planning authority, the words “2 copies of” in paragraphs (4) and (7) are omitted.”.

5. For regulation 11 (transmission of documents), substitute—

**“Transmission of documents**

11. Notices or documents required or authorised to be served, sent or supplied under these Regulations may be served, sent or supplied by—

- (a) post; or
- (b) using electronic communications to serve, send or supply the notice or document (as the case may be) to a person at such address as may for the time being be specified by the person for that purpose.”.

6. After regulation 11, insert—

**“Withdrawal of consent to use of electronic communications**

11A. Where a person is no longer willing to accept the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically, that person must give notice in writing—

- (a) withdrawing any address notified to the National Assembly or to a local planning authority for that purpose; or
- (b) revoking any agreement entered into with the National Assembly or with a local planning authority for that purpose,

and such withdrawal or revocation will be final and will take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given.”.

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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

Section 8 of the Electronic Communications Act 2000 (“the 2000 Act”) empowers the appropriate Minister (as defined in section 9 of that Act), by Order, to modify subordinate legislation for the purpose of authorising or facilitating the use of electronic communications.

For the purposes of section 8 of the 2000 Act, the National Assembly for Wales (“the National Assembly”) may, by virtue of section 10(2) of the 2000 Act, exercise the Order-making power insofar as the exercise of that power is for one of the purposes contained in section 10(3) of the 2000 Act.

Section 10(5) of the 2000 Act requires the National Assembly to secure the consent of the Secretary of State when it exercises this Order-making power. The consent of the Secretary of State for Wales has been secured.

Functions to which section 10(3) of the 2000 Act applies, and which are relevant to this Order, are contained in regulations made by the National Assembly in the exercise of its powers under the—



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- (a) Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9) (“the Listed Buildings Act”), by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); and
- (b) Town and Country Planning Act 1990 (c. 8) (“the Planning Act”), by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) (as varied by the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253) (W.5)).

Article 2 of, and Schedule 1 to, this Order modify the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003 (S.I. 2003/390) (W.52).

Article 3 of, and Schedules 2 and 3 to, this Order modify the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003 (S.I. 2003/394) (W.53) and the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003 (S.I. 2003/395) (W.54).

Similar amendments to those being made by this Order are being made, by Order, by the—

- (a) National Assembly (with the consent of the Secretary of State for Wales), to planning-related Acts and regulations insofar as they apply to Wales; and
- (b) Lord Chancellor, to procedural rules made by him in relation to planning appeals in Wales.