
WELSH STATUTORY INSTRUMENTS

2004 No. 3240 (W.282)

**LAND, WALES
ANTI-SOCIAL BEHAVIOUR, WALES**

The High Hedges (Appeals) (Wales) Regulations 2004

Made - - - - 8 December 2004

Coming into force - - 31 December 2004

The National Assembly for Wales (“the National Assembly”), in exercise of the powers conferred upon it by section 72 of the Anti-social Behaviour Act 2003 (“the Act”)(1), hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the High Hedges (Appeals) (Wales) Regulations 2004 and come into force on 31 December 2004.

(2) These Regulations apply to appeals made to the National Assembly under section 71 of the Act in relation to hedges situated in Wales.

Interpretation

2. In these Regulations—

“appeal” (“*apêl*”) means an appeal under section 71 of the Act;

“appeal form” (“*ffurflen apêl*”) means a document in the form supplied by the National Assembly for the purpose of proceedings under these Regulations or a document containing all the information required by that form;

“appointed person” (“*person penodedig*”) means a person appointed under section 72(3) of the Act;

“the parties” (“*y partïon*”) means—

- (a) the appellant;
- (b) the relevant authority;
- (c) every other person who is a complainant in relation to the complaint by reference to which a remedial notice was given; and

- (d) every owner or occupier of the land on which the high hedge is situated;
- “questionnaire” (“*holiadur*”) means a document in the form supplied by the National Assembly for the purpose of proceedings under these Regulations or a document containing all the information required by that form;
- “relevant time limits” (“*terfynau amser perthnasol*”) means the time limits prescribed by these Regulations or, where the National Assembly has exercised its power under regulation 22, any such later time limit as has been determined under that regulation; and
- “starting date” (“*dyddiad cychwyn*”) means, in relation to an appeal, the date notified by the National Assembly under regulation 10.

Grounds of appeal against the issue of remedial notices

3.—(1) An appeal under section 71(1)(a) of the Act against the issue of a remedial notice by the relevant authority may be made on the grounds that—

- (a) the height of the high hedge specified in the remedial notice is not adversely affecting the complainant’s reasonable enjoyment of the domestic property so specified;
- (b) no action should be taken in relation to the high hedge specified in the remedial notice to remedy the adverse effect on the complainant’s reasonable enjoyment of the domestic property so specified or to prevent that adverse effect recurring;
- (c) the action specified in the remedial notice exceeds what is necessary to remedy the adverse effect of the high hedge or to prevent that adverse effect recurring; or
- (d) the period specified in the remedial notice to carry out the action so specified falls short of what should reasonably be allowed.

(2) An appeal under section 71(1)(a) of the Act by a complainant in relation to the issue of a remedial notice by the relevant authority may be made on the ground that the action specified in the remedial notice is insufficient to remedy the adverse effect of the high hedge on the complainant’s reasonable enjoyment of the domestic property so specified or to prevent recurrence of the adverse effect.

Grounds of appeal against the withdrawal, waiver or relaxation of remedial notice

4.—(1) An appeal under section 71(1)(b) or (c) of the Act against the withdrawal of a remedial notice, or the waiver or relaxation of its requirements, may, provided the conditions specified in paragraph (2) are satisfied, be made on any of the grounds specified in paragraph (3).

(2) The conditions referred to in paragraph (1) are that the—

- (a) relevant authority has not issued another remedial notice in respect of the same high hedge; and
- (b) person wishing to appeal did not consent to the withdrawal of the remedial notice or (as the case may be) the waiver or relaxation of its requirements.

(3) The grounds referred to in paragraph (1) are that—

- (a) there has been no material change in circumstances since the complaint by reference to which the remedial notice was issued which would justify the withdrawal of the remedial notice or (as the case may be) the waiver or relaxation of its requirements;
- (b) the requirements of the remedial notice, as waived or relaxed, are insufficient to remedy the adverse effect of the high hedge on the complainant’s reasonable enjoyment of the domestic property specified in the remedial notice or to prevent recurrence of that adverse effect; or

- (c) in the case of an appeal by an owner or occupier of the neighbouring land, the requirements of the remedial notice, as waived or relaxed, exceed what is necessary to remedy the adverse effect of the high hedge on the complainant's reasonable enjoyment of the domestic property specified in the notice or to prevent the recurrence of that adverse effect.

Grounds of appeal where the relevant authority decides that a complaint should not proceed

5. An appeal by a complainant under section 71(3) of the Act (where the relevant authority decides either or both of the matters specified in section 68(3) of the Act otherwise than in the complainant's favour) may be made on the ground that the height of the high hedge specified in the complaint is adversely affecting the complainant's reasonable enjoyment of the domestic property so specified and action should be taken with a view to remedying the adverse effect of the high hedge specified in the complaint on the complainant's reasonable enjoyment of the domestic property so specified or preventing its recurrence.

Determination of appeals by the National Assembly

6.—(1) When considering an appeal, the National Assembly, or any person appointed by it under section 72(3) of the Act to hear and determine the appeal on its behalf, is entitled to consider any evidence or other matter irrespective of whether such evidence or matter was not, or was not able to be, considered by the relevant authority when it reached the decision to which the appeal relates.

(2) The appellant must establish the ground or grounds of the appeal and, if that person fails to do so, the appeal must be dismissed.

Appointment, and revocation of the appointment, of an appointed person

7.—(1) An appointment under section 72(3) of the Act must be in writing and may—

- (a) relate to any particular appeal or matter specified in the appointment or to appeals or matters of a description so specified;
- (b) provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment; and
- (c) by notice in writing given to the appointed person, be revoked at any time by the appeal authority in respect of any appeal or matter which has not been determined by the appointed person before that time.

(2) An appointed person has, in relation to any appeal or matter to which the appointment relates, the same powers and duties as the appeal authority, other than any function of—

- (a) making regulations;
- (b) holding a hearing; or
- (c) appointing a person for the purpose of—
 - (i) enabling persons to attend and take part in a hearing conducted by the person so appointed, or
 - (ii) referring any question or matter to that person.

(3) Where, under paragraph (1)(c), the appeal authority revokes an appointment in respect of any appeal or matter, the appeal authority must, unless it proposes to determine the appeal or matter itself, appoint another person to determine the appeal or matter instead.

(4) Where a new appointment is made, the consideration of the appeal or matter, or any hearing in connection with it, must be begun afresh; but, where this is the case, no person is entitled to make fresh representations or to modify or withdraw any representations already made.

(5) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates is to be treated for all purposes as done or omitted to be done by the appeal authority, except to the extent that such action or omission relates to—

- (a) so much of any contract made between the appeal authority and the appointed person as relates to the exercise of the function; or
- (b) any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in this paragraph.

Notice of Appeal

8.—(1) A person who wishes to appeal must give notice of that appeal to the National Assembly by sending to the National Assembly, so as to be received within the period specified in section 71(4) of the Act, the appeal form together with a copy of any supporting documents.

(2) The appellant must, as soon as is reasonably practicable thereafter, send to the relevant authority, a copy of the appeal form and any other documents referred to in paragraph (1).

Preliminary Information

9. The relevant authority must, on receipt of a notice of appeal under regulation 8, forthwith inform the National Assembly and the appellant—

- (a) of the name and address of all persons, other than the appellant, who are parties to the appeal; and
- (b) whether it wishes the appeal to be determined by an exchange of written representations or following the holding of a hearing.

Starting Date

10. The National Assembly must, as soon as practicable after—

- (a) receipt of the notice of appeal given in accordance with regulation 8 and the preliminary information under regulation 9, notify the parties—
 - (i) of the reference number allocated to the appeal,
 - (ii) whether the appeal is to be determined by an exchange of written representations or, where either the appellant or the relevant authority (or both) has so requested, following the holding of a hearing, and
 - (iii) of the address to which written communications to the National Assembly about the appeal are to be sent; and
- (b) receipt of sufficient information to enable it to entertain the appeal, notify the parties of the starting date.

Notice to interested persons

11.—(1) The relevant authority must give notice of the appeal within 2 weeks of the starting date to any persons, other than the parties, who have made representations to the relevant authority about the decision to which the appeal relates.

(2) A notice under paragraph (1) must—

- (a) state the name of the appellant and the address of the land where the high hedge to which the appeal relates is situated;
- (b) set out the matters notified by the National Assembly to the parties under regulation 10;

- (c) describe the nature of the appeal and the grounds on which it has been made;
- (d) state that copies of any representations made by any person mentioned in paragraph (1) of this regulation will be sent to the National Assembly and to each of the parties;
- (e) state that further written representations may be sent to the National Assembly so as to be received within 6 weeks of the starting date and that, where such representations are sent, three copies are required to be sent;
- (f) state that any such representations will be considered by the National Assembly when determining the appeal unless any person withdraws them within 6 weeks of the starting date; and
- (g) state the procedure which is to be used to determine the appeal.

(3) The National Assembly must send a copy of any further representations it receives under paragraph (2)(e) to each of the parties as soon as practicable after receiving them.

Questionnaire

12.—(1) The relevant authority must send to the National Assembly, and copy to each of the other parties, in each case so as to be received within 2 weeks of the starting date, a—

- (a) completed questionnaire; and
- (b) copy of each of the documents referred to in it.

(2) The questionnaire must state the date on which it was sent to the National Assembly.

Exchange of evidence

13.—(1) This regulation applies where an appeal is to be determined by written representations or following the holding of a hearing and, additionally, where an appeal is to be determined—

- (a) by written representations, regulations 14 and 19 to 22 apply;
- (b) following the holding of a hearing, regulations 15 to 22 apply.

(2) If any of the parties wish to make any representations further to the—

- (a) notice of appeal and any documents supporting it; or
- (b) questionnaire and any documents submitted with it,

that party must send three copies of those further representations to the National Assembly so as to be received within 6 weeks of the starting date and the National Assembly must, as soon as practicable after receipt, send a copy of any further representations to each of the other parties.

(3) If any of the parties wish to comment on any other party's representations, or on any representations made pursuant to regulation 11(2)(e), that party must send three copies of these to the National Assembly so as to be received within 9 weeks of the starting date.

(4) The National Assembly may disregard further information received from any of the parties which it has not received within 9 weeks of the starting date unless the National Assembly has requested the further information and the information so requested is received by the National Assembly within such period as it specified in writing when it made the request.

Appeals determined by an exchange of written representations

14.—(1) The National Assembly may, after the expiration of any time limits within which any step is required or permitted to be taken in accordance with these Regulations, and after giving to the appellant and the relevant authority written notice of its intention to do so, proceed to a decision on the appeal by taking into account only such representations and other documents as have been submitted to the National Assembly within the relevant time limits.

(2) The National Assembly may proceed to a decision on an appeal, taking into account only such written representations as have been received within the relevant time limits.

(3) The National Assembly may, after giving the parties notice of its intention to do so, proceed to a decision on an appeal, notwithstanding that no written representations have been made within the relevant time limits, if it appears to the National Assembly that it has sufficient material to enable it to reach a decision on the merits of the case.

Appeals determined following the holding of a hearing

15.—(1) The National Assembly must—

- (a) as soon as practicable, inform the relevant authority in writing that the relevant authority must notify the parties, and any other person to whom it has given notice in accordance with regulation 11, of the name of the appointed person who will conduct the hearing;
- (b) as soon as practicable after any change in the identity of the appointed person, inform the relevant authority in writing that the relevant authority must give notification of that change to those persons entitled to be notified in accordance with sub-paragraph (a), unless it is not reasonably practicable to do so before the hearing is held, in which case the name of the appointed person and the fact of that person's appointment must be announced at the commencement of the hearing; and
- (c) unless a lesser period of notice is agreed with the parties, ensure that the relevant authority gives not less than 4 weeks' written notice to the persons notified in accordance with sub-paragraph (a) of the date, time and place fixed for the hearing.

(2) Every notice of a hearing given in accordance with paragraph (1)(c) must contain—

- (a) a statement of the date, time and place of the hearing and of the powers enabling the National Assembly to determine the appeal in question;
- (b) a written description of the land sufficient to identify its location and extent;
- (c) a brief description of the subject matter of the appeal; and
- (d) details of where and when copies of documents relevant to the appeal may be inspected.

(3) Notwithstanding paragraph (1), the National Assembly may vary the date fixed for the holding of the hearing, whether or not the date as varied is within the period otherwise required by that paragraph; and paragraph (1)(c) applies to a variation of a date as it applied to the date originally fixed.

(4) The National Assembly may vary the time or place fixed for the holding of the hearing and must give such notice of any variation as appears to it to be reasonable.

Rights of attendance at, and participation in, a hearing

16. The parties are entitled to attend and take part in a hearing and the appointed person may permit any other persons to do so (whether on their own behalf or on behalf of any other person).

Procedure at a hearing

17.—(1) Except as otherwise provided in these Regulations, the appointed person may determine the procedure at a hearing.

(2) A hearing is to take the form of a discussion led by the appointed person and cross-examination is not to be permitted unless the appointed person considers that it is required to ensure proper examination of the issues relevant to the appeal.

(3) At the start of the hearing, the appointed person must identify the issues which appear to the appointed person to be the main issues to be considered at the hearing and any matters on which the appointed person requires further explanation from any person entitled or permitted to take part.

(4) Nothing in paragraph (3) is to preclude any person entitled or permitted to take part in the hearing from referring to issues which they consider relevant to the consideration of the appeal but which were not issues identified by the appointed person pursuant to that paragraph.

(5) A person entitled to take part in a hearing may, subject to the provisions contained in this regulation, call evidence, but the calling of evidence is otherwise at the appointed person's discretion.

(6) The appointed person may refuse to permit the giving of oral evidence or the presentation of any other matter which the appointed person considers to be irrelevant or repetitious but, where the appointed person refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit any evidence or other matter in writing to the appointed person before the close of the hearing.

(7) The appointed person may—

- (a) require any person attending or taking part in a hearing who, in the opinion of the appointed person, is behaving in a disruptive manner to leave; and
- (b) refuse to permit that person to return or permit that person to return only on such conditions as the appointed person may specify,

but any such person may submit any evidence or other matter in writing to the appointed person before the close of the hearing.

(8) The appointed person may allow any person to alter or add to a statement so far as may be necessary for the purposes of the hearing, but the appointed person must (if necessary by adjourning the hearing) give every other person entitled to, and who does, take part in the hearing an adequate opportunity of considering any fresh matter or document.

(9) The appointed person may proceed with a hearing in the absence of any person entitled or permitted to take part in it.

(10) The appointed person may take into account any written representation or evidence or any other document which the appointed person has received from any person before a hearing opens or during the hearing provided that the appointed person discloses it at the hearing.

(11) The appointed person may from time to time adjourn a hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice is required.

Decision following the holding of a hearing

18.—(1) The appointed person may disregard any written representations, evidence or other documents received after the hearing has closed.

(2) If, after the close of the hearing, the appointed person proposes to take into consideration any new evidence or any new matter of fact (not being a matter of National Assembly policy) which was not raised at the hearing and which the appointed person considers to be material to the decision, the appointed person must not do so without first—

- (a) notifying persons entitled to take part in the hearing (whether or not they did so) of the matter in question; and
- (b) affording them an opportunity of making written representations or of asking for the re-opening of the hearing,

provided such written representations are, or request to re-open the hearing is, received by the National Assembly within 3 weeks of the date of the notification.

(3) An appointed person may cause a hearing to be re-opened and must do so if asked by the appellant or the respondent in the circumstances, and within the period, mentioned in paragraph (2); and where a hearing is re-opened—

- (a) the appointed person must send to the persons entitled to, and who did, take part in the hearing a written statement of the matters with respect to which further evidence is invited; and
- (b) regulation 15(1)(c) applies as if the references to a hearing were references to a re-opened hearing.

Withdrawal of an appeal

19.—(1) The appellant may withdraw an appeal by giving notice in writing to the National Assembly.

(2) The National Assembly must, as soon as reasonably practicable after receiving notice of withdrawal of an appeal, give notice of that fact to the relevant authority; and, as soon as practicable after receiving such notice, the relevant authority must inform the parties and any other persons who made representations under regulation 11.

Site inspections

20.—(1) The appointed person may at any time make an unaccompanied inspection of the land without giving notice of an intention to do so to the appellant or the respondent.

- (2) During, or after the close of, a hearing, the appointed person—
 - (a) may, after announcing during the hearing the date and time at which the inspection is proposed to be made, inspect the land in the company of the parties and any other person who has been permitted to attend and take part in the hearing; and
 - (b) must make such an inspection if so requested by the parties before or during a hearing.
- (3) If an appeal is being determined by written representations, the appointed person—
 - (a) may, after giving to the parties reasonable notice in writing of an intention to do so, inspect the land in the company of the parties and any other person whom the inspector considers it reasonable to be invited; and
 - (b) must make such an inspection if so requested by the parties before the appointed person makes a decision.

(4) An appellant must take such steps as are reasonably within the appellant's power to enable the appointed person to obtain access to the land to be inspected.

(5) The appointed person is not required to defer an inspection of the kind referred to in paragraph (2) or (3) where any person mentioned in those paragraphs is not present at the time appointed.

Notification of decision of appeal

21.—(1) The decision, and the reasons for the decision, of the National Assembly or, as the case may be, the appointed person, must be notified in writing to—

- (a) the parties;
- (b) any person who, having taken part in the hearing, has asked to be notified of the decision; and
- (c) any other person to whom notice was given in accordance with regulation 11 and who has asked to be notified of the decision.

(2) Any person entitled to be notified of the decision under paragraph (1) may apply to the National Assembly, in writing, for an opportunity to inspect any documents listed in the notification and the National Assembly must afford that person that opportunity.

(3) Any person making an application under paragraph (2) must ensure that it is received by the National Assembly within 6 weeks of the date of the decision on the appeal.

(4) The decision notified to the parties under paragraph (1) is binding on the parties.

Allowing further time

22. The National Assembly may determine that later time limits than those prescribed by the Regulations are to apply and must give notice in writing of any such determination to each of the parties.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(2).

8 December 2004

D. Elis-Thomas
The Presiding Officer of the National Assembly

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 8 of the Anti-social Behaviour Act 2003 (“the Act”) gives local authorities the power to deal with complaints about high hedges which are having an adverse effect on a neighbour’s enjoyment of his or her property.

A complaint may be made by the owner or occupier of a domestic property (the “complainant”) on the grounds that his or her reasonable enjoyment of the property is being adversely affected by the height of a hedge situated on land owned or occupied by another person. A complaint must be made to the local authority in whose area the land on which the hedge is situated lies and the complaint must be accompanied by a fee determined by the local authority (subject to a maximum amount prescribed, in relation to hedges situated in Wales, by the National Assembly for Wales (“the National Assembly”)).

Section 71 of the Act sets out the various rights of appeal against a local authority’s decisions under section 68 of the Act (procedure for dealing with complaints) and under section 70 of the Act (withdrawal, waiver or relaxation of remedial notices) and against any remedial notice issued by the local authority. In relation to hedges situated in Wales, an appeal must be made to the National Assembly (“the appeal authority”).

In its capacity as the appeal authority in relation to hedges situated in Wales, section 72 of the Act gives the National Assembly the power to make regulations to—

- (a) provide the procedure for dealing with appeals under Part 8 of the Act (including specifying the grounds on which appeals may be made);
- (b) appoint another person to hear and determine appeals (an “appointed person”); and
- (c) require an appointed person to carry out all or any of the National Assembly’s functions in relation to such appeals.

The National Assembly may allow or dismiss an appeal, completely or in part. If the National Assembly allows an appeal, it may quash or vary the remedial notice to which the appeal relates and may also issue a remedial notice where the local authority decided not to do so when it dealt with the original complaint. Whatever its decision on an appeal, the National Assembly may correct any defect, error or misdescription in the original remedial notice if it considers no injustice will be caused in doing so.