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WELSH STATUTORY INSTRUMENTS

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**2016 No. 56**

The Developments of National  
Significance (Wales) Regulations 2016

PART 7

Hearings

**Application of Part 7**

**20.**—(1) This Part applies where—

- (a) notice of acceptance has been given; and
- (b) the Welsh Ministers determine that the application or any matter is to be considered in whole or in part by way of a hearing.

(2) This Part also applies where—

- (a) the Welsh Ministers have made a determination that all or part the application is to be considered on the basis of written representations or inquiry;
- (b) they subsequently vary that determination such that the application or parts of the application is or are to be considered on the basis of a hearing; and
- (c) the Welsh Ministers have caused a hearing to be held pursuant to regulation 18(4),

to such extent as the Welsh Ministers may specify having regard to any steps already taken in relation to the application.

**Date and place of hearing**

**21.**—(1) The Welsh Ministers must fix the date for the hearing.

(2) Subject to paragraph (2), the date for the hearing must be—

- (a) no later than ten weeks after the end of the representation period; and
- (b) at least one week after the end of the period allowed for further representations requested in accordance with regulation 15.

(3) Where the Welsh Ministers consider it impracticable for the hearing to be held on a date fixed in accordance with paragraph (1), the date for the hearing must be the earliest date which the Welsh Ministers consider is practicable.

(4) The place at which a hearing is to be held must be determined by the Welsh Ministers.

(5) Where the Welsh Ministers are satisfied, having regard to the nature of the application, that it is reasonable to do so, the Welsh Ministers may direct that different parts of a hearing are held at different locations.

(6) Unless the Welsh Ministers agree a shorter period of notice with the applicant and the local planning authority, the Welsh Ministers must give at least four weeks' written notice of the date, time

and place fixed by them for the holding of the hearing to the applicant, the local planning authority and any person invited to take part in the hearing.

(7) The Welsh Ministers may vary the date fixed for the hearing, whether or not the date as varied is within the period of ten weeks mentioned in paragraph (1)(a); and paragraph (5) applies to a variation of a date as it applies to the date originally fixed.

(8) The Welsh Ministers may vary the time or place for the holding of a hearing and must give such notice of any variation as appears to them to be reasonable.

### **Public notice of hearing**

**22.**—(1) Unless the Welsh Ministers otherwise direct, the local planning authority must no later than four weeks before the date fixed for the hearing—

- (a) post and maintain a notice of the hearing in the form provided by the Welsh Ministers in a conspicuous place, or (in the case of an application for permission for land-based linear works more than five kilometres in length) at intervals of not more than five kilometres, on, or as close as is reasonably practicable to, the land to which the application relates;
- (b) post and maintain the notice of the hearing in one or more places where public notices are usually posted in the area to which the proposals contained in the application relate.

(2) The Welsh Ministers must publish a notice of the hearing by local advertisement in the area in which the proposals contained in the application are to have effect, such notice to be published no later than four weeks before the date fixed for the hearing.

(3) In this regulation “by local advertisement” (“*drwy hysbysebu yn lleol*”) means—

- (a) by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated; and
- (b) where the Welsh Ministers maintain a website for the purpose of advertisement of applications, by publication of the notice on the website.

(4) Where a direction has been given under regulation 21(4), paragraph 22 has effect with the substitution—

- (a) for references to the hearing, with references to the part of the hearing which is to be held at a place specified in the direction; and
- (b) for references to the application, with references to that part of the application which is to be the subject of that part of the hearing.

(5) Any notice posted pursuant to paragraph 22 must be readily visible to and legible by members of the public.

(6) Where, without any fault or intention of the local planning authority, the notice is removed, obscured or defaced before the commencement of the hearing, the local planning authority is not for that reason to be treated as having not complied with the requirements of paragraph (5) if the local planning authority has taken reasonable steps for the protection of the notice and, if need be, its replacement.

(7) A notice of a hearing posted or published pursuant to paragraphs (1) and (2) must contain—

- (a) a statement of the date, time and place of the hearing;
- (b) a statement that the application is made under section 62D of the 1990 Act;
- (c) a description of the proposals contained in the application sufficient to identify the location of the proposed development with or without reference to a specified map;
- (d) a description of any secondary consents in relation to which the decision is to be made by the Welsh Ministers; and
- (e) details of a place where a copy of the application can be inspected.

(8) When the authority have satisfied the requirements of paragraph 22, they must inform the Welsh Ministers that they have done so within five working days, beginning with the day on which the notice is posted.

### **Appointment of an assessor**

23. Where the Welsh Ministers appoint an assessor under paragraph 14 of Schedule 4D to the 1990 Act, they must notify the applicant, the local planning authority and any person invited to take part in the hearing of the name of the assessor and of the matters on which the assessor is to advise the appointed person.

### **Participation in a hearing**

24.—(1) The persons who may take part in the hearing are—

- (a) the applicant;
- (b) the local planning authority;
- (c) any person invited to take part by the Welsh Ministers.

(2) Nothing in paragraph (1) precludes the Welsh Ministers from permitting any other person to take part in a hearing.

(3) Any person who takes part may do so on their own behalf or be represented by any other person.

### **Absence, adjournment, etc.**

25.—(1) The Welsh Ministers may proceed with a hearing in the absence of the applicant, the local planning authority and any person invited to take part.

(2) The Welsh Ministers 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.

### **Procedure at hearing**

26.—(1) The appointed person presides at any hearing and must determine the procedure at the hearing, subject to these Regulations.

(2) A hearing is to take the form of a discussion led by the appointed person and cross-examination is not to be permitted.

(3) Where the appointed person considers that cross-examination is required the appointed person must consider (after consulting the applicant) whether the hearing should be closed and an inquiry held instead.

(4) At the start of the hearing the appointed person must identify what are, in the appointed person's opinion, the matters on which the appointed person requires further representations at the hearing.

(5) The applicant, the local planning authority and any person invited to take part in a hearing are entitled to call evidence.

(6) The appointed person may permit any other person to call evidence.

(7) The appointed person may refuse to permit the giving or production of evidence or presentation of any other matter which the appointed person considers to be irrelevant or repetitious.

(8) Where the appointed person refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to the appointed person representations in writing before the close of the hearing.

(9) The appointed person may—

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

but any such person may submit to the appointed person representations in writing before the close of the hearing.

(10) The appointed person may take into account any written representation or other document received before a hearing closes provided that the appointed person discloses it at the hearing.

(11) The appointed person may invite any person taking part in the hearing to make closing submissions and any person doing so must before the close of the hearing provide the appointed person with a copy of their closing submissions in writing.

(12) Subject to paragraph (6) the appointed person may permit any person to make oral representations at the hearing.

(13) Any person entitled or permitted to make oral representations at a hearing may do so on their own behalf or be represented by another person.

### **Hearing inappropriate**

27. If at any time during a hearing it appears to the Welsh Ministers that the hearing procedure is inappropriate, the Welsh Ministers may decide to close the hearing and arrange for an inquiry to be held instead or determine that the matter is considered on the basis of written representations.

### **Procedure and report after a hearing**

28.—(1) After the close of the hearing—

- (a) the assessor (if one is appointed) may make a report in writing to the appointed person in respect of the matters on which the assessor was appointed to assist;
- (b) the appointed person must make a report in writing to the Welsh Ministers which must include the appointed person's conclusions and recommendations (or reasons for not making any recommendations).

(2) Where an assessor makes a report in accordance with paragraph (1)(a), the appointed person must—

- (a) append it to the appointed person's own report; and
- (b) state in that report how far the appointed person agrees or disagrees with the assessor's report and, where the appointed person disagrees with the assessor, the reasons for that disagreement.

(3) When making their determination, the Welsh Ministers may disregard any written representations or other document received after the hearing has closed.

(4) Paragraph (5) applies if, after the close of the hearing, the Welsh Ministers are minded to disagree with a recommendation made by the appointed person because they—

- (a) differ from the appointed person on any matter of fact mentioned in, or appearing to them to be material to, a conclusion reached by the appointed person, or

- (b) have taken into consideration any new evidence or new matter of fact (not being a matter of policy).
- (5) The Welsh Ministers must not come to a decision which is at variance with the appointed person's recommendation without first—
  - (a) notifying the applicant, the local planning authority and those persons who submitted written representations and who took part in the hearing, of their disagreement and the reasons for their disagreement; and
  - (b) affording them an opportunity of making written representations to the Welsh Ministers.
- (6) Those making written representations must ensure that such representations are received by the Welsh Ministers within the period stated in the Welsh Ministers' notification under paragraph (5)
  - (a).
- (7) The Welsh Ministers may, as they think fit, cause a hearing to be re-opened.
- (8) Where a hearing is re-opened (whether by the same or a different appointed person)—
  - (a) the appointed person must send to the applicant, the local planning authority and persons who submitted written representations or who took part in the hearing, a written statement of the matters with respect to which further representations are invited for the purposes of the appointed person's further consideration of the application; and
  - (b) regulation 26 applies as if the references to a hearing were references to a re-opened hearing.
- (9) Regulation 15(2) to (6) apply to any evidence or representation in writing submitted to the appointed person in accordance with paragraph (6) of this regulation.

### **Determination**

- 29. The Welsh Ministers may determine an application—
  - (a) after the close of the hearing or any reopened hearing; or
  - (b) if later, when the period allowed for the provision of written representations in accordance with regulation 28(6) has expired whether or not representations were received during that period.