

**EXPLANATORY MEMORANDUM TO**  
**THE TOWN AND COUNTRY PLANNING (AMENDMENT OF APPEALS**  
**PROCEDURES) (WALES) RULES 2007**

**2007 No. 2285**

1. This Explanatory Memorandum has been prepared jointly by the Welsh Assembly Government and the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This Instrument makes minor amendments to six sets of Rules made in 2003 (collectively referred to as “the 2003 Rules”) relating to the planning appeals system in Wales by correcting and clarifying the procedures set out in the 2003 Rules. The 2003 Rules streamlined the procedures before, during and after a planning-related hearing, inquiry or site visit and were designed to reduce the number of late representations, duplication of effort and delaying tactics such as withholding evidence until the last minute.

- 2.2 The 2003 Rules are –

The Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003 (S.I. 2003/1266)

The Town and Country Planning (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003 (S.I. 2003/1267)

The Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003 (S.I. 2003/1268)

The Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003 (S.I. 2003/1269)

The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003 (S.I. 2003/1270) and

The Town and Country Planning (Hearings Procedure) (Wales) Rules 2003 (S.I. 2003/1271)

2.3 The three principal issues dealt with by this Instrument are –

(a) in relation to S.I. 2003/1266, S.I. 2003/1267 and S.I. 2003/1271, to confer on the Welsh Ministers (who now exercise the functions previously exercised by the National Assembly for Wales) an express obligation to give the notice which sets the date from which other time limits specified in the Rules run. This date is referred to in the Rules as the “starting date”;

(b) in relation to S.I. 2003/1266 and S.I. 2003/1267, to change rule 6(6) so that the 4-week period (within which a person wishing to take part in an inquiry must send documents to other parties) expressly applies both to the sending of copies of the statement of case to the Welsh Ministers and to the sending of the statement of case to other parties; and

(c) in relation to rule 6(14) of S.I. 2003/1266, S.I. 2003/1267 and S.I. 2003/1270, and rule 8(14) of S.I. 2003/1269, to clarify the provision which requires a local planning authority or applicant who wishes to comment on another person’s statement of case to do so within 9 weeks of the starting date (as defined in paragraph (a) above). The 2003 Rules omitted to adjust this period when a pre-inquiry meeting is held. The intention in such circumstances was for the time limit for service of statements of case to be 4 weeks from the conclusion of the pre-inquiry meeting, thereby making the time-limit for comments in such cases 7 weeks from the conclusion of the pre-inquiry meeting. Express provision has now been included in the affected Rules to that effect. In practice, any practical difficulty arising out of the previously specified time limit in rule 6(14) or 8(14) was resolved by exercising of the power to extend time limits contained in rule 20 of S.I. 2003/1266, rule 21 of S.I. 2003/1267, rule 23 of S.I. 2003/1269 or rule 22 of S.I. 2003/1270 respectively.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The Joint Committee reported defects to S.I. 2003/1266, 2003/1267, 2003/1269 and 2003/1271 in its Twenty-Fifth Report of the 2002-03 Session.

3.2 Rules 2, 3, 5 and 7 of this Instrument make amendments to those Instruments to comply with the requirements of that Report. Rules 4 and 6 of this Instrument make amendments to two other connected Instruments (S.I. 2003/1268 and 2003/1270) to correct minor errors identified on reviewing the 2003 Rules.

3.3 Accordingly, the amendments made by this Instrument –

- (a) include an express duty for the Welsh Ministers to send notice indicating they have received all the documents they require to entertain the appeal;
- (b) include an express duty for the Welsh Ministers to send the ‘relevant notice’ from which the starting date runs;
- (c) specify a 4-week period for serving statements of case etc.; and
- (d) provide a different inquiry timescale where a pre-inquiry meeting is held.

3.4 The effect of those amendments is as follows –

The Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003 (S.I. 2003/1266) will be amended so as to contain all the amendments set out in paragraph 3.3, together with a new definition of “starting date”

The Town and Country Planning (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003 (S.I. 2003/1267) will be similarly amended

The Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003 (S.I. 2003/1268) will be amended so as to contain the amendment set out in paragraph 3.3(b)

The Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003 (S.I. 2003/1269) will be amended so as to contain the amendments set out in paragraph 3.3(b) and (d)

The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003 (S.I. 2003/1270) will be amended so as to contain the amendments set out in paragraph 3.3(b) and (d), together with the correction of a minor typographical error in the definition of “starting date” in rule 2 by substituting “2003” for “2002” and

The Town and Country Planning (Hearings Procedure) (Wales) Rules 2003 (S.I. 2003/1271) will be amended so as to contain the amendments set out in paragraph 3.3(a) and (b), together with a new definition of “starting date”.

#### **4. Legislative Background**

- 4.1 The 2003 Rules were made by the Lord Chancellor under section 9 of the Tribunals and Inquiries Act 1992. This Instrument is being made under the same power. No powers under the Tribunals and Inquiries Act 1992 were devolved to the National Assembly for Wales and those powers are accordingly not now exercisable by the Welsh Ministers created under the Government of Wales Act 2006. The function of making this Instrument in relation to Wales rests with the Lord Chancellor.
- 4.2 The Council on Tribunals has been consulted on the content of this Instrument and has stated its satisfaction with the Instrument. The Council made no other comments.

#### **5. Extent**

- 5.1 This Instrument applies in relation to Wales.

#### **6. European Convention on Human Rights**

- 6.1 As the Instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

#### **7. Policy background**

- 7.1 This Instrument will make technical amendments to the 2003 Rules, which set out the procedures through which various types of planning appeals are determined.
- 7.2 As part of the *Modernising Planning* agenda, the planning appeal procedures in Wales were revised and streamlined in 2003. The same changes were made in England in 2000. The changes applied to all appeals and therefore involved everyone from large developers to small businesses and individual householders. The 2003 Rules provided for the streamlining of the various procedures before, during and after a hearing, inquiry or site visit and were designed to reduce the number of late representations, the duplication and repetition of effort and delaying tactics such as withholding evidence until the last minute.
- 7.3 The 2003 Rules were intended to be user-friendly, to assist the reaching of decisions and to progress appropriate development schemes in as efficient and effective way as possible with the aim of speeding-up the overall appeals process. The changes benefited everyone – appellants, the private sector, local government, third parties and central government itself – by speeding-up the system without compromising the quality of decision or

the scope for public participation and thereby reducing expenditure overall.

- 7.4 The new procedures established by the 2003 Rules set out what is required of all the parties and enable everyone to understand the process and what is to be expected under each of the procedures. As the process is a quasi-judicial one, it is important that there be clarity, certainty and consistency in the processing of appeals. The new arrangements were seen as fair, proportionate, effective and challenging and that was the broad view from a wide range of bodies such as the CBI, the Welsh Local Government Association, the Royal Town Planning Institute, the Law Society and the Council on Tribunals. A specific objective in framing the revisions was to avoid unnecessary bureaucracy and to make sure the new procedures will not impose extra burdens or costs on the parties.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared as this Instrument only makes technical amendments to existing sets of Rules and has no further impact on affected persons or bodies.
- 8.2 A Regulatory Impact Assessment was prepared as part of the procedures undertaken in making the 2003 Rules. Two options were identified in the 2003 Assessment –
- (a) to leave the system as it was, with little or no improvement in the time taken to process appeals and with no encouragement for parties to improve their performance; or
  - (b) for the National Assembly for Wales and the Lord Chancellor, respectively, to introduce new Regulations and Rules.
- 8.3 The first option accepted that the arrangements existing at that time for handling planning and enforcement appeals through the different procedures worked reasonably well, but would not alleviate the problems identified with those procedures. The second option was the preferred option as the procedures set out in the 2003 Rules would improve the planning system for all parties by processing planning and enforcement appeals more effectively, and in a more streamlined way, than before.
- 8.4 The conclusion of the Assessment was that the time savings the new procedures were intended to bring about would be a welcome benefit to parties concerned and that the overall benefit of those changes would far outweigh any cost. In addition, the intention in making the changes was for the procedures to be implemented robustly and with accompanying guidance in the form of a revised Circular which was issued at that time.

## **9. Contact**

Daniel Rees in the Legal Services Department at the Welsh Assembly Government (e-mail [daniel.rees@wales.gsi.gov.uk](mailto:daniel.rees@wales.gsi.gov.uk), telephone 029 2082 6962) can answer any queries regarding this Instrument.