
WELSH STATUTORY INSTRUMENTS

2005 No. 1154 (W.71)

COUNTRYSIDE, WALES

**The Countryside Access (Appeals Procedures)
(Wales) (Amendment) Regulations 2005**

Made - - - - 12 April 2005
Coming into force - - 29 April 2005

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 32 and 44 of the Countryside and Rights of Way Act 2000 (“the Act”)(1), hereby makes the following Regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Countryside Access (Appeals Procedures) (Wales) (Amendment) Regulations 2005 and come into force on 29 April 2005.

(2) These Regulations apply to Wales.

(3) In these Regulations, words or phrases have the meaning given to them in the Act and in the Countryside Access (Appeals Procedures) (Wales) Regulations 2002 (referred to in these Regulations as “the Regulations”)(2).

Amendment of the Regulations to provide a fast-track determination of a section 25(1)(a) appeal

2.—(1) Delete regulation 1(2) of the Regulations and substitute—

“(2) Subject to paragraph (3), these Regulations apply to an appeal in Wales.

(3) Part VA of these Regulations only applies to a section 25(1)(a) appeal.

(4) Parts I, VA and VI of these Regulations apply to a section 25(1)(a) appeal in Wales; and, for the purposes of a section 25(1)(a) appeal, a reference to an “appeal” in Parts I and VI of these Regulations is to be read as a reference to a section 25(1)(a) appeal.”.

(2) In regulation 2(1) of the Regulations, after the definition of—

(a) “the Council”, add—

(1) 2000 c. 37.

(2) S.I. 2002/1794 (W.169), as amended by S.I. 2003/142 (W.14).

““electronic communication” (“cyfathrebiad electronig”) has the meaning given in section 15(1) of the Electronic Communications Act 2000;”⁽³⁾; and

(b) “section 4(2) land”, add—

““section 25(1)(a) appeal” (“apêl o dan adran 25(1)(a)”) means an appeal under section 30(3) of the Act against a decision of a relevant authority not to act in accordance with an application for a direction under section 25(1)(a) of the Act;”.

3. After regulation 28 of the Regulations (Notification of decision), insert—

“PART VA

APPEAL AGAINST DECISION OF A RELEVANT AUTHORITY NOT TO ACT IN ACCORDANCE WITH AN APPLICATION FOR A DIRECTION UNDER SECTION 25(1)(a) OF THE ACT

28A. This Part applies to a section 25(1)(a) appeal unless the National Assembly determines or requires otherwise in accordance with these Regulations.

28B.—(1) The National Assembly must, on the day on which it receives a completed appeal form from the appellant (or on the first working day thereafter where the National Assembly receives it on a day which is not a working day), send a copy of that form, together with details of the procedure to be followed in the determination of the appeal, to—

- (a) the relevant authority;
- (b) the access authority (if different to the relevant authority); and
- (c) a local access forum established under section 94 of the Act whose area of operation includes the land to which an appeal relates,

by electronic communication or facsimile transmission, except that, where it is not reasonably practicable for the National Assembly to comply with this requirement within the specified time, it must do so as soon as reasonably practicable thereafter.

(2) Where a relevant authority receives a form sent to it pursuant to paragraph (1), it must set out its statement of case and send it (or, if the statement of case has been set out by completing the relevant section of the form, send the completed form) to the National Assembly by electronic communication or facsimile transmission before the end of the second working day after the day on which the form was received by the relevant authority.

Arrangement and notification of hearing

28C. The National Assembly must, before the end of the next working day after the day on which it receives the relevant authority’s statement of case pursuant to regulation 28B(2) or, where it is not reasonably practicable to do so, as soon as reasonably practicable thereafter—

- (a) make appropriate arrangements for a hearing to be held;
- (b) by telephone, electronic communication, facsimile transmission or first class post, notify the appellant and the relevant authority of the date, time and place of the hearing; and
- (c) unless it is not reasonably practicable to do so, ensure that the information referred to in paragraph (b), together with a copy of the completed appeal form (and the

relevant authority's statement of case, if separate), is available for inspection on a website maintained by National Assembly until the appeal is determined.

Attendance and participation at a hearing

28D.—(1) The persons entitled to take part in the hearing are the appellant and the relevant authority.

(2) The appointed person may permit any other person to attend, or take part in, the hearing.

(3) Any person entitled or permitted to attend, or take part in, the hearing may do so in person or be represented by any other person.

Procedure at hearing

28E.—(1) Subject to the following provisions of this regulation, the appointed person will determine the procedure at a hearing.

(2) A hearing will take the form of a discussion led by the appointed person and cross-examination will not be permitted unless the appointed person considers it necessary to ensure a thorough examination of the main issues.

(3) At the start of the hearing, the appointed person, after announcing the appointed person's name and the fact of the appointed person's appointment, and requiring the relevant authority to sign the completed appeal form (and its statement of case, if separate) must identify what, in the appointed person's opinion, are the main issues to be considered at the hearing and any matters on which the appointed person requires further explanation from any person taking part in the hearing; but this will not preclude the addition in the course of the hearing of other issues for consideration or prevent any person taking part in the hearing from referring to issues which that person considers relevant to the consideration of the appeal but which were not issues so identified by the appointed person.

(4) The appellant and the relevant authority will be entitled to give, or to call another person to give, oral evidence; and any other person may give, or call another person to give, oral evidence if so permitted by an appointed person at the appointed person's discretion.

(5) Notwithstanding any such entitlement or permission specified in paragraph (4), the appointed person may, at any stage in the proceedings refuse to permit the giving of evidence or presentation of any other matter which the appointed person considers to be irrelevant or repetitious.

(6) Where the appointed person refuses to permit the giving of oral evidence, the person wishing to give, or call any other person to give, evidence may submit to the appointed person any evidence or other matter in writing before the close of the hearing.

(7) The appointed person may require any person attending, or taking part in, the hearing who, in the appointed person's opinion, is behaving in a disruptive manner to leave the hearing; and the appointed person may 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 to the appointed person any evidence or other matter in writing before the close of the hearing.

(8) The appointed person may—

- (a) proceed with a hearing in the absence of any person entitled to take part in it;
- (b) take into account any written representation or evidence, or any other document received by the appointed person, from any person before a hearing opens or during the hearing provided the appointed person discloses it in the hearing; and

- (c) at any 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.

Notification of decision — appeals determined by the National Assembly

28F. Where a hearing has been held for the purposes of an appeal determined by the National Assembly, it must, within 3 working days of the close of the hearing, notify its decision on the appeal to the appellant, the relevant authority, the National Assembly and any other person who took part in the hearing by sending to them a copy of the amended appeal form (and the relevant authority’s statement of case, if separate) with the National Assembly’s decision endorsed on it.

Notification of decision — appeals determined by an appointed person

28G.—(1) Where a hearing has been held for the purposes of an appeal in respect of which the power to determine the appeal has been delegated by the National Assembly to an appointed person, the appointed person must—

- (a) unless it is not reasonably practicable to do so, announce the decision on the appeal at the close of the hearing; and
- (b) within two working days of the close of the hearing, notify the decision on the appeal to the appellant, the relevant authority, the National Assembly and any other person who took part in the hearing, by sending to them a copy of the amended appeal form (and the relevant authority’s statement of case, if separate) with the appointed person’s decision endorsed on it.

(2) The National Assembly must ensure that, as soon as practicable after it has been notified under paragraph (1), a copy of the appeal form (and the relevant authority’s statement of case, if separate) is made available for inspection on the website maintained or endorsed by the National Assembly for Wales for a period of 3 months.”.

4. In regulation 30 of the Regulations (Change to the form of an appeal), after “regulation 5”, add “ or Part VA”.

5. In regulation 31 of the Regulations (Further or different procedures), after “extension of time”, add “ or the appeal is a section 25(1)(a) appeal”.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(4).

12 April 2005

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under the Countryside and Rights of Way Act 2000 (“the Act”), the National Assembly for Wales (“the National Assembly”) has the power to make regulations to set out the procedures to be followed in determining appeals brought under Part I of the Act. The Countryside Access (Appeals Procedures) (Wales) Regulations 2002 (S.I. 2002/1794) (W.169) (“the Appeals Procedures Regulations”) were made in July 2002 to set out such procedures.

These new Regulations amend the Appeals Procedures Regulations by inserting into those Regulations a new Part VA and by making the necessary minor consequential amendments to enable the other provisions of the Appeals Procedures Regulations to apply to an appeal against a decision of a relevant authority not to act in accordance with an application for a direction under section 25(1)(a) of the Act, where appropriate.

The new provisions—

- (a) introduce a fast-track procedure for the determination of an appeal brought by a person who applied to the relevant authority (the Countryside Council for Wales or, as the case may be, the relevant National Park authority) for a direction permitting the exclusion or restriction of access to land for the purposes of fire prevention (section 25(1)(a) of the Act) and the relevant authority decided not to give the direction applied for; and
- (b) enable a hearing to be held once the National Assembly has received the relevant preliminary information from the parties to enable the appeal to proceed.