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WELSH STATUTORY INSTRUMENTS

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**2006 No. 1387 (W.137)**

**TOWN AND COUNTRY PLANNING, WALES**

**The Planning (National Security Directions and  
Appointed Representatives) (Wales) Regulations 2006**

<i>Made</i>	- - - -	<i>23 May 2006</i>
<i>Coming into force</i>	- -	<i>7 June 2006</i>

The National Assembly for Wales (“the National Assembly”), in exercise of its powers under section 321(7) of the Town and Country Planning Act 1990 (as modified by section 321B(3) of that Act)(**1**), paragraph 6A(3) of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) Act 1990 (as modified by paragraph 8(3) of that Schedule)(**2**) and paragraph 6A(3) of the Schedule to the Planning (Hazardous Substances) Act 1990 (as modified by paragraph 8(3) of that Schedule)(**3**), makes the following Regulations:

**Title, commencement and application**

**1.**—(1) The title of these Regulations is the Planning (National Security Directions and Appointed Representatives) (Wales) Regulations 2006 and they come into force on 7 June 2006.

(2) These Regulations apply in relation to Wales.

**Interpretation**

**2.**—(1) In these Regulations—

“affected person” (“person yr effeithir arno”) means the person who will be prevented, by direction, from hearing or inspecting closed evidence at a local inquiry if a direction is given;  
“appointed representative” (“cynrychiolydd penodedig”) means a person appointed by the Counsel General to the National Assembly under—

- (a) section 321(5) or (6) of the principal Act as modified by section 321B(2) of that Act;
- (b) paragraph 6A(1) or (2) of Schedule 3 to the Listed Buildings Act as modified by paragraph 8(2) of Schedule 3 to that Act; or

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(1) 1990 c. 8. Subsections (5) to (12) of section 321, and section 321B, were inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), sections 80(1) and 81(1) respectively.  
(2) 1990 c. 9. Paragraphs 6A and 8(3) were inserted by the Planning and Compulsory Purchase Act 2004, sections 80(3) and 81(2) respectively.  
(3) 1990 c. 10. Paragraphs 6A and 8(3) were inserted by the Planning and Compulsory Purchase Act 2004, sections 80(4) and 81(3) respectively.

(c) paragraph 6A(1) or (2) of the Schedule to the Hazardous Substances Act, as modified by paragraph 8(2) of the Schedule to that Act;

“closed evidence” (“tystiolaeth gaeedig”) means evidence which is subject to a direction;

“the directing authority” (“yr awdurdod cyfarwyddo”) means the National Assembly or, as the case may be, the Secretary of State;

“direction” (“cyfarwyddyd”) means a direction given by the directing authority under–

- (a) section 321(3) of the principal Act;
- (b) paragraph 6(6) of Schedule 3 to the Listed Buildings Act; or
- (c) paragraph 6(6) of the Schedule to the Hazardous Substances Act;

“document” (“dogfen”) includes a photograph, map or plan;

“electronic communication” (“cyfathrebu electronig” and “cyfathrebiad electronig”) has the meaning given in section 15(1) of the Electronic Communications Act 2000(4);

“the Hazardous Substances Act” (“y Ddeddf Sylweddau Peryglus”) means the Planning (Hazardous Substances) Act 1990;

“the Listed Buildings Act” (“y Ddeddf Adeiladau Rhestredig”) means the Planning (Listed Buildings and Conservation Areas) Act 1990;

“the parties” (“y part 149 on”) means–

- (a) the person making the request for a direction; and
- (b) the appointed representative;

“potentially closed evidence” (“tystiolaeth gaeedig bosibl”) means evidence in respect of which a request for a direction has been made;

“the principal Act” (“y brif Ddeddf”) means the Town and Country Planning Act 1990; and

“written representations” (“sylwadau ysgrifenedig”) includes supporting documents.

(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” (“cyfeiriad”) includes any number or address used for the purposes of such communications;
- (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 (8) 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.

(8) A requirement in these Regulations to send more than one copy of a statement or other document is complied with by sending one copy only of the statement or other document in question in electronic form.

### **Application of certain regulations in particular cases**

**3.—**(1) These Regulations apply in a case where the directing authority is considering giving or has given a direction under any of the following provisions—

- (a) section 321(3) of the principal Act;
  - (b) paragraph 6(6) of Schedule 3 to the Listed Buildings Act; or
  - (c) paragraph 6(6) of the Schedule to the Hazardous Substances Act.
- (2) Regulation 4 applies to all appointed representatives.
- (3) Regulations 5 to 14 apply in relation to a case where an appointed representative has been appointed under—
- (a) section 321(5) of the principal Act;
  - (b) paragraph 6A(1) of Schedule 3 to the Listed Buildings Act; or
  - (c) paragraph 6A(1) of the Schedule to the Hazardous Substances Act.

### **Functions of an appointed representative**

**4.—**(1) The first function of an appointed representative is to represent the interests of the affected person by—

- (a) taking instructions from the affected person before receiving copies of potentially closed evidence;
- (b) making written representations as to whether a direction should be given; and
- (c) in respect of a hearing held in accordance with regulation 10—
  - (i) dealing with preliminary matters,
  - (ii) making submissions, and
  - (iii) cross-examining witnesses.

(2) The second function of an appointed representative is to represent the interests of the affected person by—

- (a) where the appointed representative has been appointed under—
  - (i) section 321(6) of the principal Act;
  - (ii) paragraph 6A(2) of Schedule 3 to the Listed Buildings Act; or
  - (iii) paragraph 6A(2) of the Schedule to the Hazardous Substances Act,taking instructions from the affected person before receiving copies of closed evidence;
- (b) dealing with preliminary matters in relation to closed evidence in respect of a local inquiry;
- (c) making submissions or cross-examining witnesses, in relation to closed evidence, at a local inquiry; and

(d) attending site visits.

(3) The third function of an appointed representative is to ensure that the copies of the closed evidence or potentially closed evidence are returned to the person who supplied them as soon as practicable after—

- (a) the directing authority has given notice under regulation 14 that it does not intend to give a direction;
- (b) the local inquiry, to which the closed evidence relates, has ended; or
- (c) the National Assembly has notified the appointed representative that no local inquiry, to which the closed evidence relates, will be held,

whichever is the last.

(4) The fourth function of an appointed representative is to make applications to the Court in relation to any of the appointed representative's other functions.

(5) For the purposes of any of the functions, the appointed representative may discuss any matter relating to the closed evidence or potentially closed evidence with—

- (i) the person who has supplied the closed or potentially closed evidence to the directing authority, or,
- (ii) a person specified, or of any description specified, in the direction.

### **Acknowledgement of request for a direction**

5.—(1) Any person may request a direction by giving notice in writing to the directing authority to that effect.

(2) As soon as practicable after receiving a request for a direction, the directing authority must acknowledge receipt of the request in writing.

### **Publicity**

6.—(1) As soon as practicable after receiving a request for a direction, the fact that a request has been received must be publicised by the directing authority in the manner prescribed by this regulation.

(2) In the case of a request which relates to an application for planning permission for development which—

- (a) is an EIA application accompanied by an environmental statement;
- (b) does not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated; or
- (c) would affect a right of way to which Part 3 of the Wildlife and Countryside Act 1981(5)(public rights of way) applies,

the request must be publicised in the manner specified in paragraph (3).

(3) A request falling within paragraph (2) (“a paragraph (2) request”) must be publicised by giving notice—

- (a) by site display in at least one place on or near the land to which the application for planning permission relates for not less than 2 weeks; and
- (b) by local advertisement for 2 consecutive weeks contemporaneous with the notice period in sub-paragraph (a).

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(5) 1981 c. 69. Relevant amendments were made by the Countryside and Rights of Way Act 2000, section 51 and Schedule 5, Part I.

(4) In the case of a request for a direction which is not a paragraph (2) request, if the proposed development to which the request relates is major development the request must be publicised by giving notice—

- (a) by site display in at least one place on or near the land to which the application relates for not less than 2 weeks or by serving the notice on any adjoining owner or occupier; and
- (b) by local advertisement for 2 consecutive weeks contemporaneous with the notice period in sub-paragraph (a).

(5) In a case to which neither paragraph (2) nor paragraph (4) applies, a request for a direction must be publicised by giving notice—

- (a) by site display in at least one place on or near the land to which the application relates for not less than 2 weeks; or
- (b) by serving the notice on any adjoining owner or occupier.

(6) A notice given under paragraphs (3), (4) or (5) must—

- (a) state that a request for a direction has been made;
- (b) state that written representations as to whether a direction should be given can be made to the directing authority at the address specified in the notice; and
- (c) specify the date by which any such representations must be made to the directing authority (being a date not less than 2 weeks from the date when the notice is given).

(7) Where the notice is, without any fault or intention of the directing authority, removed, obscured or defaced before the period of 2 weeks referred to in paragraph (3)(a), (4)(a)(i) or (5)(a) has elapsed, the directing authority will be treated as having complied with the requirements of the relevant paragraph if it has taken reasonable steps for protection of the notice and, if need be, its replacement.

(8) In this regulation—

“adjoining owner or occupier” (“perchennog neu feddianydd cyffiniol”) means any owner or occupier of any land adjoining the land to which the application relates;

“dwellinghouse” (“tŷ annedd”) does not include a building containing one or more flats, or a flat contained within such a building;

“EIA application” (“cais Asesiad o'r Effaith Amgylcheddol”) has the meaning given in regulation 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999(6), and “environmental statement” means a statement which the applicant refers to as an environmental statement for the purposes of those Regulations;

“by local advertisement” (“drwy hysbyseb lleol”) means—

- (a) 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 directing authority maintains a website for the purpose of advertising applications, by publication of the notice on that website;

“major development” (“datblygiad mawr”) means development involving any one or more of the following—

- (a) the winning and working of minerals or the use of land for mineral-working deposits;
- (b) waste development;
- (c) the provision of dwellinghouses where—
  - (i) the number of dwellinghouses to be provided is 10 or more; or

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(6) [S.I. 1999/293](#) to which there are amendments not relevant to this instrument.

- (ii) the development is to be carried out on a site having an area of 0.5 hectare or more and it is not known whether the development falls within paragraph (c)(i);
  - (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
  - (e) development carried out on a site having an area of 1 hectare or more;
- “by site display” (“drwy ei arddangos ar y safle”) means by the posting of the notice by firm affixture to some object, sited and displayed in such manner as to be easily visible and legible by members of the public; and
- “waste development” (“datblygiad gwastraff”) means any operational development designed to be used wholly or mainly for the purpose of, or a material change of use to, treating, storing, processing or disposing of refuse or waste materials.

### **Information to be sent to the parties**

7.—(1) As soon as practicable after notice of the request for a direction has been given in accordance with regulation 6, the directing authority must—

- (a) notify, in writing, the appointed representative of the date by which any written representations as to whether a direction should be given must be received by the directing authority (being a date not less than 6 weeks from the date when the notice to the appointed representative is given); and
- (b) at the same time, send a copy of the notice referred to in sub-paragraph (a) to the other party.

(2) As soon as practicable after being notified by the appointed representative that the appointed representative has taken instructions from the affected person, the directing authority must send to the appointed representative—

- (a) a copy of the request for a direction; and
- (b) where the potentially closed evidence includes documentary evidence or a written statement of evidence of a person who intends to give oral evidence, a copy of that evidence.

### **Written representations procedure**

8.—(1) For the purposes of these Regulations, the request for a direction comprises the written representations of the person making the request for a direction.

(2) The directing authority must, as soon as practicable after receipt, send—

- (a) a copy of any written representations made to it by the appointed representative to the other party; and
- (b) copies of any written representations made to it by persons pursuant to regulation 6(6)(b) to the parties.

(3) If either party makes any further representations, the directing authority must, as soon as practicable after receipt, send a copy of the further representations to the other party.

(4) The directing authority must proceed to a decision on a request for a direction taking into account only such representations as have been submitted within the relevant time limits.

(5) In paragraph (4) “relevant time limits” means the time limits prescribed by regulations 6(6)(c) and 7(1)(a) or, where the directing authority has exercised its power under regulation 11, any later time limit.

### **Decision to hold a hearing and date of hearing**

9.—(1) Where the directing authority considers that one or more matters relating to the request would be more satisfactorily resolved by holding a hearing attended by the parties, it must give the parties written notice accordingly.

(2) The date fixed by the directing authority for the holding of a hearing must be not later than 6 weeks after the date of the notice referred to in paragraph (1).

(3) Unless the directing authority agrees a lesser period of notice with the parties, it must give to them not less than 2 weeks' written notice of the date, time and place fixed by it for the holding of the hearing.

(4) The directing authority may vary the date fixed for the holding of the hearing, whether or not the date as varied is within the period of 6 weeks mentioned in paragraph (2); and paragraph (3) applies to a variation of a date as it applied to the date originally fixed.

(5) The directing authority may vary the time or place for the holding of a hearing and must give the parties such notice of any variation as appears to it to be reasonable.

### **Hearing procedure**

10.—(1) Except as otherwise provided in these Regulations, the directing authority must determine the procedure at a hearing.

(2) A hearing must take the form of a discussion led by the directing authority and cross-examination will be permitted if the directing authority considers it necessary to ensure a thorough examination of the main issues.

(3) At the start of the hearing the directing authority must identify what are, in its opinion, the main issues to be considered at the hearing and any matters on which it requires further explanation from the parties.

(4) Nothing in paragraph (3) precludes the parties from referring to issues which they consider relevant to the consideration of the request for a direction but which were not issues identified by the directing authority pursuant to that paragraph.

(5) The directing authority may—

- (a) proceed with a hearing in the absence of any party;
- (b) take into account any written representation or evidence or any other document received by it from any person before a hearing opens or during the hearing provided that the directing authority discloses it at the hearing; and
- (c) 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.

(6) When making its determination the directing authority may disregard any written representations, evidence or other document received after the end of the hearing.

### **Further time**

11. The directing authority may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of these Regulations and references in these Regulations to a day by which, or a period within which any step is required or enabled to be taken, will be construed accordingly.

### **Notices by post**

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

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

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

**13.** 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, the person must give notice in writing—

- (a) withdrawing any address notified to the directing authority for that purpose; or
- (b) revoking any agreement entered into with the directing 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 7 days after the date on which the notice is given.

#### **Notification of decision**

**14.—**(1) As soon as practicable after determining whether or not to make a direction the directing authority must notify its decision to any person who made representations to it in relation to the direction; but nothing in this paragraph requires or permits the directing authority to give reasons for its decision, where the giving of reasons would result in the public disclosure of closed evidence.

(2) Where a direction is given the directing authority must, at the same time as notifying its decision in accordance with paragraph (1), send a copy of the direction to the appointed representative and the person who requested the direction.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(7)

23 May 2006

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



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## EXPLANATORY NOTE

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

Section 321 of the Town and Country Planning Act 1990 (“the 1990 Act”) provides that all planning inquiries are to be held in public except to the extent where, in relation to land in Wales, the National Assembly for Wales (“the National Assembly”) or the Secretary of State otherwise direct that it would be contrary to national security on the grounds of national interest or the security of premises or property.

Sections 321 (as amended by the Planning and Compulsory Purchase Act 2004 (c. 5) (“the 2004 Act”)) and 321B of the 1990 Act make provision for the Counsel General to the National Assembly for Wales (“the National Assembly”) to appoint persons (“appointed representatives”) to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if a section 321 direction is given by the National Assembly or the Secretary of State.

Paragraphs 6, 6A and 8 of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) Act 1990 and paragraphs 6, 6A and 8 of the Schedule to the Planning (Hazardous Substances) Act 1990 make similar provision in respect of those Acts.

By virtue of the entries for the above cited Acts in Schedule 1 to 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) in the case of the 1990 Act), the power to give a direction under those provisions in relation to Wales is exercisable concurrently by either the National Assembly or the Secretary of State. In these Regulations they are each referred to as “the directing authority”.

These Regulations make provision as to the procedure to be followed by the directing authority when it is considering whether to give a national security direction. Those provisions relate to publicity (regulation 6), written representations (regulation 8), hearings (regulations 9 and 10) and notification of the directing authority’s decision (regulation 14).

These Regulations also set out the functions of appointed representatives (regulation 4).

The options for handling cases involving national security issues impact primarily on central government and have no impact on the costs of business, charities, voluntary bodies nor other parts of the private sector. The costs to central government will be minimal. A full regulatory impact assessment has consequently not been produced for this instrument.