

## SCHEDULE 2

Regulation 51

Modifications where national security direction given

### Interpretation

1. Regulation 3 is read as if in the appropriate places there is inserted—

““appointed representative” (*“cynrychiolydd penodedig”*) means a person appointed under section 321(5) or (6) of the Planning Act, sections 22 and 40 of, and paragraph 6A of Schedule 3 to, the Listed Buildings Act and section 21 of, and paragraph 6A of the Schedule to, the Hazardous Substances Act;”;

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

““security direction” (*“cyfarwyddyd diogelwch”*) means a direction given by the Welsh Ministers or the Secretary of State under section 321(3) of the Planning Act, paragraph 6(6) of Schedule 3 to the Listed Buildings Act or paragraph 6(6) of the Schedule to the Hazardous Substances Act;”.

### Site inspections

2. Regulation 8 is read as if—

- (a) at the end of paragraph (2) there is inserted “and they must so notify any appointed representative”;
- (b) after paragraph (2) there is inserted—
- “(2A) Where an inspection of a site involves the inspection of closed evidence, the Welsh Ministers may inspect the land in the company of the appellant and any appointed representative.”

### Further information

3. Regulation 9 is read as if after paragraph (8) there is inserted—

“(8A) Paragraph (8) does not apply where the representations and written responses received by the Welsh Ministers (“further representations”) include or refer to closed evidence.

(7B) Where further representations include or refer to closed evidence the Welsh Ministers must—

- (a) as soon as reasonably practicable after receipt, send the further representations to the appellant and any appointed representative; and
- (b) make the further representations (other than the closed evidence) available in such manner as the Welsh Ministers think appropriate as soon as reasonably practicable.”

### Representations

4. Regulation 22 is read as if after paragraph (7) there is inserted—

“(7A) Paragraph (7) does not apply where the full statement of case received by the Welsh Ministers (“the full statement of case”) includes or refers to closed evidence.

(7B) Where the full statement of case received includes or refers to closed evidence the Welsh Ministers must—

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- (a) as soon as reasonably practicable after receipt, send the full statement of case to the appellant and any appointed representative; and
- (b) make the full statement of case (other than the closed evidence) available in such manner as the Welsh Ministers think appropriate as soon as reasonably practicable.”

#### **Interested persons’ representations**

5. Regulation 23 is read as if after paragraph (3) there is inserted—

“(3A) Paragraph (3) does not apply where the representations received by the Welsh Ministers from interested persons (“interested persons’ representations”) include or refer to closed evidence.

(3B) Where the interested persons’ representations include or refer to closed evidence the Welsh Ministers must—

- (a) as soon as reasonably practicable after receipt, send the interested persons’ representations to the appellant and any appointed representative; and
- (b) make the interested persons’ representations (other than the closed evidence) available in such manner as the Welsh Ministers think appropriate as soon as reasonably practicable.”

#### **Further representations**

6. Regulation 24 is read as if after paragraph (4) there is inserted—

“(4A) Paragraph (4) does not apply where the written comments received by the Welsh Ministers (“written comments”) include or refer to closed evidence.

(4B) Where the written comments include or refer to closed evidence the Welsh Ministers must—

- (a) as soon as reasonably practicable after receipt, send the written comments to the appellant and any appointed representative; and
- (b) make the written comments (other than the closed evidence) available in such manner as the Welsh Ministers think appropriate as soon as reasonably practicable.”

#### **Appointment of assessor**

7. Regulations 28 and 37 are read as if after “the local planning authority” there is inserted “, any appointed representative”.

#### **Date, place and notification of hearing and inquiry**

8. Regulations 29 and 42 are read as if after paragraph (4)(b) there is inserted—

“(ba) any appointed representative;”.

#### **Participation in a hearing, participation in an inquiry**

9. Regulations 31(1) and 38(1) are read as if after subparagraph (b) there is inserted—

“(ba) any appointed representative;”.

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

10. Regulations 32(1) and 39(1) are read as if after “local planning authority” there is inserted “, any appointed representative”.

### **Procedure at hearing**

11. Regulation 33(5) is read as if after “local planning authority” there is inserted “, any appointed representative”.

### **Pre-inquiry meetings**

12. Regulation 40(2) is read as if after subparagraph (b) there is inserted—  
“(ba) any appointed representative;”.

### **Written statements of evidence**

13. Regulation 44 is read as if—

(a) after paragraph (1) there is inserted—

“(1A) Paragraph (1) does not apply where the written statement of evidence includes or refers to closed evidence.

(1B) Where the written statement of evidence includes or refers to closed evidence—

(a) the appellant, the local planning authority and each person invited to take part in the inquiry who propose to give or call another person to give evidence at the inquiry by reading a written statement, must send to the Welsh Ministers—

(i) one copy of the written statement including closed evidence, together with a written summary;

(ii) one copy of the written statement excluding closed evidence (“the open statement”), together with a written summary;

(b) the appellant must send one copy of the open statement, together with a written summary, to the local planning authority;

(c) the local planning authority must send one copy of the open statement, together with a written summary, to the appellant.”;

(b) after paragraph (2) there is inserted—

“(2A) Paragraph (2) does not apply where the written statement of evidence includes or refers to closed evidence.

(2B) Where the written statement of evidence includes or refers to closed evidence the Welsh Ministers must, as soon as reasonably practicable after receipt—

(a) send a copy of the open statement, together with any summary, of each person invited to take part in the inquiry to the local planning authority; and

(b) send a copy of each open statement, together with any summary, to each person invited to take part in the inquiry.”

### **Procedure at inquiry**

14. Regulation 45 is read as if—

(a) in paragraphs (3), (5) and (6) after “local planning authority” there is inserted “, any appointed representative”;

(b) after paragraph (12) there is inserted—

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“(12A) Paragraph (12) does not apply if any written representation or any other document received by the appointed person (“further information”) includes or refers to closed evidence.

(12B) Where the further information includes or refers to closed evidence, the appointed person must—

- (a) disclose the further information to the appellant and any appointed representative;
- (b) disclose the further information (other than the closed evidence) to the local planning authority and every person who takes part in the inquiry.”

**Procedure after written representations, hearings, inquires or combined proceedings.**

**15.** Regulation 47 is read as if after paragraph (4) there is inserted—

“(4A) Paragraph (4) does not apply where closed evidence was considered.

(4B) Where closed evidence was considered—

- (a) the appointed person and assessor, where one has been appointed, must set out in a separate part (“the closed part”) of their reports any description of that evidence together with any conclusions or recommendations in relation to that evidence; and
- (b) where an assessor has been appointed, the appointed person must append the closed part of the assessor’s report to the closed part of the appointed person’s report and must state in the closed part of that report how far the appointed person agrees or disagrees with the closed part of the assessor’s report and, where there is disagreement with the assessor, the reasons for that disagreement.”

**16.** Regulation 48 is read as if—

(a) after paragraph (4) there is inserted—

“(4A) Paragraph (4) does not apply where closed evidence was considered.

(4B) Where closed evidence was considered—

- (a) the appointed person and assessor, where one has been appointed, must set out in a separate part (“the closed part”) of their reports any description of that evidence together with any conclusions or recommendations in relation to that evidence; and
- (b) where an assessor has been appointed, the appointed person must append the closed part of the assessor’s report to the closed part of the appointed person’s report and must state in the closed part of that report how far the appointed person agrees or disagrees with the closed part of the assessor’s report and, where there is disagreement with the assessor, the reasons for that disagreement.”;

(b) after paragraph (9) there is inserted—

“(9A) Paragraph (9) does not apply where the Welsh Ministers 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 in relation to a matter in respect of which closed evidence has been given.

(9B) Where the Welsh Ministers 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 in relation to a matter in respect of which closed evidence has been given, they must include the reasons for the Welsh Ministers disagreement unless—

- (a) the notification is addressed to a person who is neither the appointed representative nor any person specified, or of a description specified, in the security direction; and
- (b) the inclusion of the reasons would disclose any part of the closed evidence.”

#### **Notification of decision**

**17.** Regulation 49 is read as if—

- (a) in paragraph (1), before “The Welsh Ministers,” there is inserted “Subject to paragraph (1A);
- (b) after paragraph (1), there is inserted—
  - “(1A) Where the Welsh Ministers reasons for a decision relate to matters in respect of which closed evidence has been given, nothing in paragraph (1) requires the Welsh Ministers to notify those reasons to any person other than—
  - (a) the appointed representative; or
  - (b) a person specified, or of any description specified, in the security direction.”;
- (c) in paragraph (2), before “Where a copy” there is inserted “Subject to paragraph (3A)”;
- (d) after paragraph (3) there is inserted—
  - “(3A) Nothing in paragraphs (2) or (3) require the disclosure or inspection of the closed part of the appointed person’s report, or of any documents comprising or containing closed evidence appended to the appointed person’s report, to any person other than—
  - (a) the appointed representative; or
  - (b) a person specified, or of any description specified, in the security direction.”

#### **Procedure following quashing of decision**

**18.** Regulation 50(1) is read as if after subparagraph (a) there is inserted—

- “(aa) subparagraph (a) does not apply where the matters referred to in subparagraph (a) will involve consideration of closed evidence;
- (ab) where the matters referred to in subparagraph (a) will involve consideration of closed evidence, the Welsh Ministers will only send the written statement to—
  - (i) the appointed representative; or
  - (ii) a person specified, or of any description specified, in the security direction;”.

#### **Closed evidence not to be disclosed**

**19.** After regulation 51 there is inserted—

- “**51A.** Nothing in these Regulations is to be taken so as to require or permit closed evidence to be disclosed to any person other than—
  - (a) the Welsh Ministers;
  - (b) the appointed person; or
  - (c) a person specified, or of any description specified, in the security direction.”