WELSH STATUTORY INSTRUMENTS

2017 No. 565

The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017

PART 5

Appeals

Appeals

30.—(1) An appeal to the Welsh Ministers in accordance with this regulation may be made against—

(a) a relevant notice; or

(b) a relevant decision.

(2) An appeal against a relevant notice may be brought on the grounds that—

(a) the Welsh Ministers did not have the power to serve the relevant notice or to include a condition within the notice;

(b) there has been some material irregularity, defect or error in, or in connection with, the relevant notice; or

(c) a requirement of the notice is unreasonable.

(3) An appeal against a relevant decision may be brought by a person—

(a) who applied for a screening decision which the Welsh Ministers have taken, or are deemed to have taken, that a project was a significant project in accordance with regulation 7;

(b) who applied for consent for a significant project and which the Welsh Ministers have refused; or

(c) who has been notified of a decision under paragraph 3 of Schedule 4.

(4) An appeal brought under paragraph (2) or (3) must—

(a) be made in writing in the manner and form published by the Welsh Ministers;

(b) include details of all the evidence that the appellant intends to rely on; and

(c) be received by the Welsh Ministers no later than 28 days after the date on which the Welsh Ministers sent the relevant notice or made the relevant decision to which the appeal relates.

(5) The appellant must state whether they wish the appeal to be considered and determined—

(a) on the basis of written representations;

(b) at an oral hearing; or

(c) by a local inquiry.

(6) The Welsh Ministers may appoint a person to exercise on their behalf, with or without payment, their function of determining the appeal or any matter involved in the appeal, and Schedule 5 has effect in relation to such an appointment.

(7) In this Part—

"appointed person" ("*person penodedig*") means a person appointed by the Welsh Ministers in accordance with regulation 30(6).

"interested parties" ("*partïon â buddiant*") means—

(a) such of the consultation bodies as the Welsh Ministers consider appropriate;

(b) a person who made representations in respect of a relevant decision;

(c) an EEA State likely to be affected in accordance with regulation 13(1);

(d) an authority or a person who provided their opinion in accordance with regulation 13(4)(b);

(e) any other person who appears to the Welsh Ministers to have a particular interest in the subject matter of the appeal;

"relevant decision" ("*penderfyniad perthnasol*") means a screening decision made under regulation 7, a consent decision made under regulation 15 and a decision made under paragraph 3 of Schedule 4; and

"relevant notice" ("*hysbysiad perthnasol*") means a stop notice, remediation notice or a notice issued under paragraph 5 of Schedule 4.

Appeal proceedings

31.—(1) If the Welsh Ministers are satisfied that a submitted appeal complies with the requirements of regulation 30 in all material particulars, they must proceed to determine the appeal.

(2) Before determining the appeal the Welsh Ministers must, allowing such time as is reasonable—

(a) invite the appellant and any interested parties to submit representations and supporting documents in relation to the appeal;

(b) send to the interested parties a copy of any representations and supporting documents submitted by the appellant;

(c) send to the appellant a copy of any representations and supporting documents submitted by the interested parties;

(d) allow the appellant and the interested parties an opportunity to submit comments on each other's representations and supporting documents to the appointed person.

(3) The Welsh Ministers may at any time request further information from the appellant or the interested parties.

(4) The Welsh Ministers may disregard any representations, comments or documents which have been submitted other than in accordance with the provisions of these Regulations.

(5) If an oral hearing or local inquiry is to be held, the Welsh Ministers must—

(a) give the appellant and interested parties 6 weeks' notice of the date, time and place fixed for the hearing or local inquiry and the name of the person appointed to conduct the hearing or local inquiry (or, as applicable, to determine the appeal); and

(b) give such notice as they think fit to inform the public not less than 21 days before the date fixed for the hearing or local inquiry.

(6) At an oral hearing or local inquiry the appellant has the right to appear, and the Welsh Ministers may permit an interested party to appear.

(7) On determining an appeal, the Welsh Ministers—

(a) may affirm, vary or revoke a relevant notice;

(b) may uphold or reverse a relevant decision or any part of it;

(c) must notify the appellant and any other party to the appeal.

(8) An appeal may be withdrawn by the appellant at any time before it is determined.

(9) Withdrawal of an appeal is to be effected by the appellant giving notice in writing to the Welsh Ministers.

(10) If an appeal is withdrawn, the Welsh Ministers cease to be under a duty to consider and determine it.

(11) Subsections (2) to (5) of section 250 of the Local Government Act 1972(**1**) (local inquiries, evidence and costs) apply in relation to hearings or local inquiries held in accordance with regulation 33 as they apply to local inquiries under that section, but as if the references to the Minister were references to the Welsh Ministers and with the omission of references to a local authority.

(12) Section 322C of the Town and Country Planning Act 1990(**2**) (Costs: Wales) applies in relation to an oral hearing or local inquiry under regulation 30 as it applies to a hearing or local inquiry referred to in that section.

Effect of appeals on notices

32.—(1) Where an appeal is brought against a remediation notice, the notice will be of no effect until the Welsh Ministers have determined the appeal in accordance with regulation 31(7).

(2) Where an appeal is brought against a stop notice, all requirements contained within the notice have effect until the Welsh Ministers have determined the appeal in accordance with regulation 31(7).

(3) A determination by the Welsh Ministers to vary a stop notice or remediation notice in accordance with regulation 31(7)(a) only has effect from the date of the notification under regulation 31(7)(c).

Application to the High Court by a person aggrieved

33.—(1) A person aggrieved by a decision of the Welsh Ministers that a project is not a significant project or a decision to grant consent for a significant project may make an application to the High Court for an order quashing the decision.

(2) The High Court may quash a decision mentioned in paragraph (1) if it satisfied that—

(a) the decision is not lawfully made; or

(b) the interests of the person who has applied to the court have been substantially prejudiced by a failure to comply with any other requirement of these Regulations.

(3) An application to the High Court under this regulation must be made within 6 weeks of the date the decision is—

(a) entered in the register in accordance with regulation 7(6)(b); or

(b) published accordance with regulation 18(b).

(4) The High Court may be interim order, pending the determination of an application under this regulation, stay the operation of the decision on such terms as it considers appropriate.

(**1**) 1972 c. 70 .
(**2**) 1990 c. 8. As amended by section 49 of the Planning (Wales) Act 2015 (anaw 4).