

# PLANNING (WALES) ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 7 Enforcement Appeals etc**

##### ***Section 43 – Breach of planning control: Enforcement warning notice***

166. This section inserts section 173ZA into the TCPA 1990.
167. Section 173ZA introduces enforcement warning notices. Local planning authorities are able to serve an enforcement warning notice where it appears to them that there has been a breach of planning control and there is a reasonable prospect that planning permission would be granted if an application were to be submitted. Copies of the notice must be served on the owner, occupier and any other person having an interest in the land. Notices must identify the breach of planning control and state that further enforcement action may be taken if a planning application for the breach is not submitted within a specified time.
168. Enforcement warning notices constitute the taking of enforcement action and therefore have the effect of providing local planning authorities with a period of 4 years to take further enforcement action in respect of the breach, by virtue of section 171B(4) of the TCPA 1990.

##### ***Section 44 – Appeal against enforcement notice: deemed application for planning permission***

169. Where an appeal is made to the Welsh Ministers against an enforcement notice, section 177(1) of the TCPA 1990 allows the Welsh Ministers to grant planning permission as an alternative to upholding the enforcement notice, and section 177(5) provides that the appellant is deemed to have applied for planning permission.
170. **Section 44** of the Act amends section 177 to provide that the Welsh Ministers may only grant planning permission following an enforcement appeal if the appeal was made on ground (a) set out in section 174(2), i.e. on the ground that planning permission ought to be granted. Section 177(5) is also amended so that only ground (a) appeals result in a deemed application for planning permission.

##### ***Section 45 – Restrictions on right to appeal against planning decisions***

171. **Section 45** amends section 78 of the TCPA 1990 by inserting new subsections (4AA) and (4AB).
172. The effect is to prevent consecutive appeals in respect of an unauthorised development. Subsection (4AA) prevents an appeal against the refusal of planning permission for development where that development has been the subject of an enforcement notice and planning permission for that development was not granted in an appeal against the enforcement notice. Subsection (4AB) has a similar effect by preventing appeals

against the refusal of planning permission subject to conditions, where a condition was not previously discharged in an appeal.

***Section 46 – Restrictions on right to appeal against enforcement notice***

173. This section amends section 174 of the TCPA 1990. It deals with the converse situation to that addressed by section 45. The amendment prevents appeals against enforcement notices being brought on the ground that planning permission ought to be granted, where the enforcement notice is issued after the Welsh Ministers on appeal have already upheld a decision to refuse planning permission for matters specified in the enforcement notice as constituting a breach of planning control. Similarly, an enforcement appeal cannot be brought on the grounds that a condition ought to be discharged if a decision to grant planning permission subject to the condition was upheld on a previous appeal.

***Section 47 – No variation of application after service of notice of appeal against planning decision etc.***

174. This section inserts new provisions into the sections of the planning Acts that deal with appeals against refusals or failures to grant planning applications and applications for listed buildings and hazardous substances consents.
175. The effect of these insertions is that an application may not be varied following service of notice of appeal under various sections of those Acts, except in such circumstances as may be prescribed by a development order or regulations. If circumstances are prescribed, the order or regulations must provide for a varied application to be subject to such further consultation as the Welsh Ministers consider appropriate.

***Section 48 – Appeal against notice in respect of land adversely affecting amenity***

176. This section amends section 217 of the TCPA 1990.
177. The effect of the amendment is to transfer responsibility for determining appeals against notices served under section 215 (land adversely affecting amenity) from the Magistrates' Courts to the Welsh Ministers. The Welsh Ministers may make provision for the procedures to make such an appeal and the information to be provided. (Non-compliance with a section 215 notice and other offences under section 216 continue to be dealt with by Magistrates.) Appeals against decisions made by the Welsh Ministers will be made to the High Court.

***Section 49 – Costs on applications, appeals and references***

178. This section inserts section 322C into the TCPA 1990. Section 322C replaces a number of existing provisions relating to the costs of planning applications and appeals that are considered by the Welsh Ministers, in particular provisions contained in sections 320, 322 and 322A of the TCPA 1990 and paragraph 6 of Schedule 6. Those provisions apply section 250(4) and (5) of the Local Government Act 1972, which relates to the costs of local inquiries, to planning proceedings for certain purposes. Section 250(4) and (5) deals with the powers of Ministers to require the parties to the proceedings to pay the Ministers' costs, and to require one party to pay the costs incurred by another party.
179. Section 322C brings all costs provisions relating to planning procedures into one place and applies whether matters proceed by way of written representations, hearing or inquiry. The section allows the Welsh Ministers to recover the entire administrative costs they incur, including general staff costs and overheads. The section also allows the Welsh Ministers to prescribe a standard daily amount.
180. This is a standalone provision for costs to be awarded following an application, appeal or reference to the Welsh Ministers. Subsection (2) enables the Welsh Ministers to direct that their own costs are recovered from the local planning authority or party to an appeal. Subsection (3) allows the Welsh Ministers to recover administrative costs

incurred. Subsection (4) allows the Welsh Ministers to recover costs in respect of an inquiry or hearing that does not take place and costs incurred in reviewing planning obligations. Subsection (5) allows the Welsh Ministers, by regulations, to prescribe a standard daily amount for costs. Subsection (6) enables the Welsh Ministers may make orders for costs. This means that one party can be ordered to pay another party's costs.

***Section 50 – Procedure for certain proceedings***

181. This section inserts section 323A into the TCPA 1990. Section 323A allows the Welsh Ministers to make regulations setting out the procedures for planning determinations, whether they proceed by way of written representations, hearing or inquiry.
182. Section 323A replaces section 323 of the TCPA 1990 in relation to Wales. Section 323 allowed the Welsh Ministers to make regulations for the procedure to be followed where matters were determined on the basis of written representations, rules for the procedure to be followed at hearings and inquiries being made by the Lord Chancellor under section 9 of the Tribunals and Inquiries Act 1992. The Lord Chancellor's power to make rules for planning proceedings in Wales is replaced by the Welsh Ministers' power to make regulations under section 323A.
183. Section 323A enables the Welsh Ministers to prescribe, by regulations, the procedure to be followed in connection with appeals, applications or references that are considered by the Welsh Ministers and dealt with in writing, by hearing or inquiry. The regulations may make provision about the procedure to be followed in connection with matters before or after an inquiry, hearing or the making of written representations. The regulations may prescribe timescales for the submission of documents and representations and the giving of directions. The regulations may prevent new matters being raised at an appeal which could have been raised during the application stage.

***Section 51 – Costs and procedure on appeals etc.: further amendments***

184. **Section 51** introduces Schedule 5. Schedule 5 makes consequential, technical amendments.