
WELSH STATUTORY INSTRUMENTS

2007 No. 2933

The Environmental Impact Assessment
(Agriculture) (Wales) Regulations 2007

PART 5

Appeals

Appeals against notices

- 30.**—(1) A person may appeal to the Welsh Ministers in accordance with this regulation against—
- (a) a stop notice;
 - (b) a remediation notice, or
 - (c) a notice under paragraph 5 of Schedule 4,
- and any such notice is referred to in this regulation as the “relevant notice” (*“hysbysiad perthnasol”*).
- (2) An appeal may be brought on any of the following grounds—
- (a) that the Welsh Ministers did not have power to serve the relevant notice, or to include a particular requirement in it;
 - (b) that there has been some material irregularity, defect or error in, or in connection with, the relevant notice; or
 - (c) that any of the requirements of the relevant notice are unreasonable.
- (3) An appeal against a relevant notice must be brought by notice, which must—
- (a) include a copy of the relevant notice;
 - (b) state the grounds of appeal; and
 - (c) be served on the Welsh Ministers within 28 days of the date of service of the relevant notice.
- (4) Except as otherwise provided by this regulation, the Welsh Ministers may determine the procedure (which may include provision for site visits) for deciding the appeal.
- (5) Appeals under this regulation may be conducted by written representations or by hearing.
- (6) On determining the appeal, the Welsh Ministers—
- (a) may affirm, vary or revoke the relevant notice, and
 - (b) must notify the applicant with the reasons for their decision.
- (7) Where an appeal is brought against a stop notice (unless the notice is withdrawn by the Welsh Ministers) all the requirements contained in it have effect until such time as the Welsh Ministers revoke the notice or vary the requirements.
- (8) If the Welsh Ministers vary the requirements of a screening notice or a stop notice the variations have effect from the date of notification under paragraph (6)(b).

(9) Where an appeal is brought against a remediation notice, the notice will be of no effect until it is affirmed or varied on appeal or until the appeal is withdrawn.

(10) 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.

Appeals against screening and consent decisions

31.—(1) The persons specified in paragraph (2) may appeal to the Welsh Ministers under this regulation against a decision, consent or notification (as the case may be) (a “relevant decision”).

(2) The persons referred to in paragraph (1) are—

- (a) a person who has applied for a screening decision in respect of a project which the Welsh Ministers have decided is a significant project, or is deemed to have so decided, under regulation 7;
- (b) a person who has applied for consent for a significant project in respect of which consent has been refused or has been granted subject to conditions, other than those specified in regulation 17(2); and
- (c) a person who has been notified of a decision under paragraph 3 of Schedule 4.

(3) An appeal against a relevant decision must be brought within 3 months of the date the person was notified of the relevant decision.

(4) A notice of appeal must—

- (a) describe the relevant decision;
- (b) state the grounds of appeal; and
- (c) state whether the appellant would like the appeal to be in the form of a hearing or local inquiry or to be disposed of on the basis of written representations.

(5) The Welsh Ministers must serve copies of the notice on the interested parties as soon as is reasonably practicable after receiving that information.

(6) A person who is served with a copy of the notice under paragraph (5) may only make representations in respect of the appeal if he or she notifies the Welsh Ministers of his or her wish to do so within 21 days of the date he or she receives the copy of the notice.

(7) The Welsh Ministers must decide—

- (a) whether the appeal should be by hearing or by local inquiry; or
- (b) whether the appeal should be conducted by written representations,

and the Welsh Ministers must notify their decision to the participants in the appeal.

(8) On determining the appeal, the Welsh Ministers may allow or dismiss the appeal, or reverse any part of the relevant decision, and may consider the appeal as though they were considering the decision at first instance.

(9) 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.

(10) 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.

(1) 1972 c. 70.

(11) Section 322A of the Town and Country Planning Act 1990⁽²⁾ (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or local inquiry under regulation 33 as it applies to a hearing or local inquiry referred to in that section.

(12) Except as otherwise provided by this regulation or by regulation 32 or 33, the Welsh Ministers must determine the procedure (which may include provisions for site visits) for deciding the appeal.

(13) Any representations, statement or other documents to be submitted to the Welsh Ministers under regulation 32 or 33 must be accompanied by so many copies as the Welsh Ministers may specify.

(14) In this regulation, “relevant decision” means —

- (a) a decision referred to in paragraph (2)(a)
- (b) a refusal of consent or a grant of consent subject to conditions referred to in paragraph (2)(b)
- (c) a notification referred to in paragraph (2)(c).

Determination of appeals by written representations

32.—(1) This regulation applies where an appeal is to be determined by written representations.

(2) Within 6 weeks of receiving notice that the appeal is to be so determined the appellant must—

- (a) serve on the Welsh Ministers any (or any further) representations they wishes to rely on in the appeal; or
- (b) notify the Welsh Ministers that they wish to rely only on the information already provided.

(3) As soon as is practicable after receiving the information or notification in paragraph (2), the Welsh Ministers must—

- (a) send copies of any (or any further) representations to the other participants in the appeal; and
- (b) notify the other participants in the appeal of any notification by the appellant that he or she does not wish to rely on any further representations.

(4) Any of the participants in the appeal who wish to make representations must do so within 28 days of the date he or she is notified of the information or indication under paragraph (3).

(5) If the Welsh Ministers receive any representations under paragraph (4), they must send copies of those representations to the other participants in the appeal.

(6) The Welsh Ministers must allow the participants in the appeal a period of at least 14 days to respond to any representations made under paragraphs (2) or (4).

(7) Following the expiry of the period allowed in paragraph (4) the Welsh Ministers, or the person appointed to determine the appeal, must determine the appeal and notify the decision to the participants in the appeal.

Determination of appeals by hearing or local inquiry

33.—(1) This regulation applies where an appeal is to be determined by hearing or by local inquiry.

(2) Within 6 weeks of receiving notice that the appeal is to be so determined, the appellant must serve on the Welsh Ministers a statement containing full particulars of his or her case and copies of any documents he or she wishes to rely on at the hearing or local inquiry.

(2) 1990 c. 8. Section 332A was inserted by the Planning and Compensation Act 1991 (c. 34), section 30(1).

(3) After receiving the statements and documents in paragraph (2), the Welsh Ministers must send copies of them to the other participants in the appeal.

(4) The Welsh Ministers must—

- (a) give the participants in the appeal 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.

(5) The Welsh Ministers may vary the time or place for the hearing or local inquiry and must give such notice of the variation as they think fit.

(6) If an interested party wishes to be heard at the hearing or local inquiry he or she must notify the Welsh Ministers within 28 days of being sent the appellant's statements under paragraph (3).

(7) Where a person has so notified the Welsh Ministers, the Welsh Ministers may require him or her to submit a statement containing the particulars of his or her case and copies of any documents he or she wishes to refer to (except documents which the appellant served under paragraph (2)).

(8) The Welsh Ministers must send copies of any statements and documents received under paragraph (7) to the appellant.

(9) The Welsh Ministers may require any person who has provided them with a statement under paragraph (2) or (7) to provide them with any further information they specify in relation to the statement, and must send a copy of the further information to each of the other participants in the appeal.

(10) Before a hearing or local inquiry takes place the Welsh Ministers must make all of the documents submitted available for inspection by any person who so requests.

(11) The participants in the appeal are entitled to be heard at a hearing or local inquiry.

(12) Any participant in the appeal who proposes to give evidence at an inquiry by reading a witness statement must send a copy of the witness statement, and a written summary of it, to the Welsh Ministers not less than 3 weeks before the date fixed for the inquiry, and the Welsh Ministers must send copies of the witness statement and summary to the other participants in the appeal.

(13) After the conclusion of the hearing or local inquiry, the person appointed to conduct the hearing or local inquiry must, unless he or she has been appointed to determine the appeal, make a report to the Welsh Ministers which must include—

- (a) his or her conclusions; and
- (b) his or her recommendations or his or her reasons for not making any recommendations.

(14) If the Welsh Ministers are minded to disagree with the recommendation made in the report because they—

- (a) differ from the person making the report on any matter of fact mentioned in, or appearing to them to be material to, a conclusion reached by that person; or
- (b) takes into consideration new evidence or a new matter of fact,

they must not come to a decision without first giving every person who appeared at the hearing or local inquiry an opportunity to make representations within a reasonable time specified by them.

(15) The Welsh Ministers or the person appointed to determine the appeal must notify the decision and the reasons for it, and send a copy of the report made under paragraph (13), to the participants in the appeal.

Application to the court by person aggrieved

34.—(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 the decision if it is 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) Any application to the High Court under this regulation must be made within 6 weeks of the date the decision is entered in the register in accordance with regulation 7(4)(b) or published in accordance with regulation 18(b).

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

Interpretation of this Part

35. In this Part—

“interested parties” (*“partïon sydd â buddiant”*) means—

- (a) such of the consultation bodies as the Welsh Ministers consider appropriate;
- (b) any person who made representations in respect of a relevant decision (within the meaning of “relevant decision” in regulation 31(14)).
- (c) any EEA State consulted under regulation 13(4);
- (d) any authority or person who forwarded their opinion under 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.

“participants in the appeal” (*“cyfranogwyr yn yr apêl”*) means—

- (a) the appellant;
- (b) the interested parties;
- (c) in the case of a hearing or local enquiry, any other person permitted to take part by the person appointed to conduct the hearing or local inquiry.