
WELSH STATUTORY INSTRUMENTS

2017 No. 544

The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017

PART 1

General

Title and commencement

1. The title of these Regulations is the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 and they come into force on the 5 May 2017.

Application

- 2.—(1) These Regulations apply in Wales in relation to—
- (a) the applications listed in paragraph (2) made on or after the date on which these Regulations come into force; and
 - (b) the appeals listed in paragraph (2) where—
 - (i) the application which is the subject of the appeal is made on or after the date on which these Regulations come into force; or
 - (ii) the enforcement notice which is the subject of the appeal was issued on or after the date on which these Regulations come into force.
- (2) The applications and appeals referred to in paragraph (1) are—
- (a) an application for planning permission referred to the Welsh Ministers under section 77 of the Planning Act (reference of applications to the Secretary of State);
 - (b) an appeal under section 78 of the Planning Act (right to appeal against planning decisions and failure to take such decisions) or under that section—
 - (i) as applied by section 198(3)(c) and (4) of that Act (tree preservation orders); and
 - (ii) as applied by regulations made under section 220 of the Planning Act (regulations controlling display of advertisements);
 - (c) an appeal under section 174 of the Planning Act (appeal against enforcement notice) or under that section as applied by regulation 16 of, and Part 1 of Schedule 4 to, the 2015 Regulations⁽¹⁾ (appeals against hazardous substances contravention notices);
 - (d) an appeal under section 195 of the Planning Act (appeals against refusal or failure to give decision on application for a certificate of lawfulness of existing or proposed use or development);
 - (e) an appeal under section 208 of the Planning Act (appeals against tree replacement notices);

(1) S.I. 2015/1597 (W. 196).

- (f) an appeal under section 217 of the Planning Act (appeal against a notice requiring the maintenance of land);
- (g) an application for listed building consent referred to the Welsh Ministers under section 12, or for variation or discharge of conditions referred to them under that section as applied by section 19, or an appeal to them under section 20, of the Listed Buildings Act;
- (h) an application for conservation area consent referred to the Welsh Ministers under section 12 (including an application to which that section is applied by section 19), or an appeal to them under section 20, of the Listed Buildings Act as those sections are applied by section 74(3) of that Act;
- (i) an appeal under section 39 of the Listed Buildings Act (appeal against listed buildings enforcement notice) or under that section as applied by section 74(3) of that Act (appeal against conservation area enforcement notice);
- (j) an application for hazardous substances consent referred to the Welsh Ministers under section 20 of the Hazardous Substances Act (reference of applications to Secretary of State);
- (k) an appeal under section 21 of the Hazardous Substances Act (appeals against decisions or failure to take decisions relating to hazardous substances).

Interpretation

3.—(1) In these Regulations—

“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 Planning Act” (“*y Ddeddf Gynllunio*”) means the Town and Country Planning Act 1990;

“the 2015 Act” (“*Deddf 2015*”) means the Planning (Wales) Act 2015(2);

“the 2012 Order” (“*Gorchymyn 2012*”) means the Town and Country Planning (Development Management Procedure) (Wales) Order 2012(3);

“the 2012 Regulations” (“*Rheoliadau 2012*”) means the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012(4);

“the 2015 Regulations” (“*Rheoliadau 2015*”) means the Planning (Hazardous Substances) (Wales) Regulations 2015(5);

“appointed person” (“*person penodedig*”) means a person appointed by the Welsh Ministers to determine an appeal or to report to the Welsh Ministers(6);

“advertisement application” (“*cais i arddangos hysbyseb*”) means an application for express consent to display an advertisement made under Part 3 of the Town and Country Planning (Control of Advertisements) Regulations 1992(7);

“advertisement consent appeal” (“*apêl ynghylch caniatâd >i arddangos >hysbyseb*”) means an appeal under section 78(1) of the Planning Act (as applied by regulations made under

(2) [2015 anaw 4](#).

(3) [S.I. 2012/801 \(W. 110\)](#).

(4) [S.I. 2012/793 \(W. 108\)](#).

(5) [S.I. 2015/1597 \(W. 196\)](#).

(6) See the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Wales) Regulations 2015 ([S.I. 2015/1822 \(W. 264\)](#)).

(7) [S.I. 1992/666](#).

section 220 of the Planning Act) in relation to an advertisement application, except an appeal against the grant of any consent which is granted subject to conditions;

“appeal” (“*apêl*”) means—

- (a) the determination of a referred application; and
- (b) an appeal made under sections 78, 174, 195, 208 or 217 of the Planning Act, sections 20 or 39 of the Listed Buildings Act or section 21 of the Hazardous Substances Act;

“appellant” (“*apelydd*”) means, in the case of—

- (a) an application referred to the Welsh Ministers under section 77 of the Planning Act, section 12 or 19 of the Listed Buildings Act or section 20 of the Hazardous Substances Act, the person who made that application to the local planning authority;
- (b) an appeal under section 78 of the Planning Act, section 20 of the Listed Buildings Act or section 21 of the Hazardous Substances Act, the person whose application was refused, granted subject to conditions (other than advertisement consent appeals, householder appeals and minor commercial appeals) or not determined, by the local planning authority;
- (c) an appeal under section 174 of the Planning Act, the person who has given notice of appeal to the Welsh Ministers under that section;
- (d) an appeal under section 195 of the Planning Act, the person whose application under section 191 of that Act was refused;
- (e) an appeal under section 208 of the Planning Act, the person who has given notice of appeal to the Welsh Ministers under that section;
- (f) an appeal under section 217 of the Planning Act, the person who has given notice of appeal to the Welsh Ministers under that section;
- (g) an appeal under section 39 of the Listed Buildings Act, the person who has given notice of appeal to the Welsh Ministers under that section;

“combined proceedings” (“*achosion cyfunol*”) means proceedings which combine two or more of the following—

- (a) written representations;
- (b) a hearing;
- (c) an inquiry.

“discontinuance notice” (“*hysbysiad peidio â pharhau*”) means a notice under regulation 8 of the Town and Country Planning (Control of Advertisements) Regulations 1992;

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

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

“electronic communication” (“*cyfathrebiad electronig*”) has the meaning given in section 15(1) of the Electronic Communications Act 2000⁽⁸⁾;

“enforcement appeal” (“*apêl gorfodi*”) means an appeal against an enforcement notice;

“enforcement notice” (“*hysbysiad gorfodi*”) means a notice under—

- (a) section 172(1) of the Planning Act;
- (b) section 182(1) of the Planning Act;

⁽⁸⁾ 2000 c. 7. Section 15(1) was amended by section 406(1) of, and paragraph 158 of Schedule 17 to, the Communications Act 2003 (c. 21).

- (c) section 38(1) of the Listed Buildings Act or under that section as applied by section 74(3) of that Act;
 - (d) section 46(1) of the Listed Buildings Act;
 - (e) section 24(1) of the Hazardous Substances Act;
 - (f) section 207(1) of the Planning Act;
 - (g) section 215(1) of the Planning Act;
- “full statement of case” (*datganiad achos llawn*)—
- (a) in relation to appeals other than enforcement appeals, has the meaning given in—
 - (i) article 2 of the 2012 Order;
 - (ii) regulation 2 of the 2012 Regulations;
 - (iii) regulation 2 of the 2015 Regulations;
 - (iv) section 78 of the Planning Act as modified by regulation 15 of, and Part III of Schedule 4 to, the Town and Country Planning (Control of Advertisements) Regulations 1992;
 - (v) section 78 of the Planning Act as modified by regulation 15 of, and Part V of Schedule 4 to, the Town and Country Planning (Control of Advertisements) Regulations 1992;
 - (vi) section 78 of the Planning Act as modified by article 7 of, and Part I of Schedule 2 to, the Schedule (Form of Tree Preservation Order) to the Town and Country Planning (Trees) Regulations 1999⁽⁹⁾;
 - (b) in relation to enforcement appeals—
 - (i) in the case of an appeal against a notice under section 24(1) of the Hazardous Substances Act, has the meaning given in section 174 of the Planning Act as modified by regulation 16 of, and Part 1 of Schedule 4 to, the 2015 Regulations;
 - (ii) in all other cases, means the full statement of case submitted by the appellant under regulations 8, 9 or 10 of the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017⁽¹⁰⁾;
 - (c) means and is comprised of, in relation to appeals other than enforcement appeals—
 - (i) a written statement by the local planning authority containing full particulars of the case the local planning authority proposes to put forward in relation to the appeal; and
 - (ii) copies of any documents the local planning authority proposes to refer to or put in evidence;
 - (d) means and is comprised of, in relation to enforcement appeals—
 - (i) a written statement by the local planning authority containing—
 - (aa) a response to each ground of appeal pleaded by the appellant;
 - (bb) an indication of whether the local planning authority would be prepared to grant—
 - (bba) planning permission for the matters alleged in the enforcement notice to constitute a breach of planning control;

⁽⁹⁾ S.I. 1999/1892.

⁽¹⁰⁾ S.I. 2017/530 (W. 113)

- (bbb) listed building consent or conservation area consent for the works to which the listed building enforcement notice or conservation area enforcement notice relates, as the case may be;
 - (bbc) hazardous substances consent for the presence on, over or under the land of any quantity of hazardous substances to which the hazardous substances contravention notice relates;
 - (cc) particulars of the conditions, if any, they would wish to impose on any permission or consent they would be prepared to grant;
 - (dd) full particulars of the case the local planning authority proposes to put forward in relation to the appeal; and
- (ii) copies of any documents the local planning authority proposes to refer to or put in evidence;

“householder appeal” (*“apêl deiliad tŷ”*) means an appeal under section 78(1)(a) of the Planning Act in relation to a householder application but does not include—

- (a) an appeal against the grant of any planning permission which is granted subject to conditions; or
- (b) an appeal which is accompanied by an appeal under section 174 of the Planning Act or under section 20 of the Listed Buildings Act;

“householder application” (*“cais deiliad tŷ”*) means an application for—

- (a) planning permission for the enlargement, improvement or other alteration of a dwellinghouse, or development within the curtilage of such a dwellinghouse, or
- (b) change of use to enlarge the curtilage of a dwellinghouse,

for any purpose incidental to the enjoyment of the dwellinghouse but does not include—

- (i) any other application for change of use,
- (ii) an application for erection of a dwellinghouse, or
- (iii) an application to change the number of dwellings in a building;

“interested persons” (*“personau â buddiant”*) means—

- (a) in relation to appeals other than enforcement appeals—
 - (i) any person notified or consulted in accordance with the Planning Act, Listed Buildings Act, Hazardous Substances Act, a development order or regulations, as the case may be, about the application; and
 - (ii) any other person who made representations to the local planning authority about that application;
- (b) in relation to enforcement appeals and discontinuance notices, occupiers of properties in the locality of the site to which the enforcement notice or discontinuance notice relates; and
- (c) in relation to enforcement appeals other than appeals against tree replacement notices, any person (other than the recipient of the enforcement notice) who, in the opinion of the local planning authority or hazardous substances authority, is affected by the matters alleged in the enforcement notice.

“by local advertisement” (*“drwy hysbyseb lleol”*) means by publication of the notice in a newspaper circulating in the locality in which the land to which the appeal relates is situated;

“local planning authority” (*“awdurdod cynllunio lleol”*) means in relation to—

- (a) a referred application, the body which would have dealt with the application had it not been referred to the Welsh Ministers;

(b) an appeal under section 78 or section 195 of the Planning Act, section 20 of the Listed Buildings Act or section 21 of the Hazardous Substances Act, the body which was responsible for determining the application occasioning the appeal;

(c) an appeal under section 174, section 208 or section 217 of the Planning Act or section 39 of the Listed Buildings Act, the body which issued the notice occasioning the appeal;

“minor commercial appeal” (“*apêl fasnachol fach*”) means an appeal under section 78(1)(a) of the Planning Act in relation to a minor commercial application but does not include—

(a) an appeal against the grant of any planning permission which is granted subject to conditions; or

(b) an appeal which is accompanied by an appeal under section 174 of the Planning Act or under section 20 of the Listed Buildings Act;

“minor commercial application” (“*cais masnachol bach*”) means an application for planning permission for the enlargement, improvement or other alteration of an existing building of no more than 250 square metres gross external floor space at ground floor level, or part of that building, currently in use for any of the purposes set out in Schedule 1 to these Regulations which is an application for—

(a) the change of use from any of the purposes set out at paragraph 1 in Schedule 1 to these Regulations to any of the purposes set out in either paragraph 2 or paragraph 3 of that Schedule;

(b) the change of use from any of the purposes set out at paragraph 2 in Schedule 1 to these Regulations to any of the purposes set out in paragraph 3 of that Schedule; or

(c) the carrying out of building or other operations to a shop front;

“questionnaire” (“*holiadur*”) means a document in the form supplied by the Welsh Ministers to a local planning authority for the purpose of any proceedings under these Regulations, and for this purpose a form is taken to be supplied where the Welsh Ministers have published it on a website and have notified the local planning authority of—

(a) publication of the form on the website;

(b) the address of the website; and

(c) the place on the website where the form may be accessed and how it may be accessed;

“referred application” (“*cais atgyfeiriedig*”) means in relation to section 77 of the Planning Act, section 12 or 19 of the Listed Buildings Act and section 20 of the Hazardous Substances Act, the application which has been referred to the Welsh Ministers but does not include an application which is deemed to have been referred to the Welsh Ministers by virtue of regulation 9(3) of the 2012 Regulations⁽¹¹⁾;

“relevant time limits” (“*terfynau amser perthnasol*”) means the time limits prescribed by these Regulations, or where the Welsh Ministers have exercised the power under regulation 7, any later time limit;

“representation” (“*sylw*”) includes evidence, explanation, information and comments;

the “representation period” (“*cyfnod sylwadau*”) is the period of 6 weeks beginning with the starting date;

the “starting date” (“*dyddiad dechrau*”) means the date specified in the notice given by the Welsh Ministers under regulation 15 (notification of receipt of appeal);

“working day” (“*diwrnod gwaith*”) means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday in Wales; and

(11) S.I. 2012/793 (W. 108).

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

(2) 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 electronic 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.

Use of electronic communications

4.—(1) Paragraphs (2) to (7) of this regulation 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 notice or other document to any other person (“the recipient”).

(2) 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.

(3) In paragraph (2) “legible in all material respects” (“*darllenadwy ym mhob modd perthnasol*”) 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.

(4) 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.

(5) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (2), and “written” (“*ysgrifenedig*”) and cognate expressions are to be construed accordingly.

(6) Where an appellant, local planning authority or an interested party send any notice or other document to the Welsh Ministers using electronic communications, they will be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the appeal which are capable of being carried out electronically;
- (b) that their address for the purposes of such communications is the address incorporated into, or otherwise logically associated with, the notice or document;
- (c) that the deemed agreement of the appellant, local planning authority or an interested party under this paragraph will subsist until the appellant, local planning authority or interested party, as the case may be, gives notice in accordance with regulation 6 of a wish to revoke the agreement.

(7) Where an appellant, local planning authority or an interested party are taken to have agreed to the use of electronic communications under paragraph (6) they will also be taken to have agreed to the provision of a direct link to the notice or document on a website.

(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 electronic form.

Transmission of documents

5. Notices or documents required to be sent or supplied under these Regulations may be sent or supplied by—

- (a) post;
- (b) using electronic communications to transmit the notice or document to a person at such address as may for the time being be specified by that person for such purpose; or
- (c) providing a direct link to the notice or document to a person at such address as may for the time being be specified by that person for such purpose.

Withdrawal of consent to use of electronic communications

6.—(1) Where a person is no longer willing to accept the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically, the person must give notice in writing—

- (a) withdrawing any address notified to the Welsh Ministers or to a local planning authority for that purpose; or
 - (b) revoking any agreement entered into with the Welsh Ministers or with a local planning authority for that purpose.
- (2) Withdrawal or revocation under paragraph (1) is final and takes effect on the later of—
- (a) the date specified by the person in the notice but that date must not be less than 1 week after the date on which the notice is given; or
 - (b) the expiry of the period of 1 week beginning with the date on which the notice is given.

Allowing further time

7. The Welsh Ministers may in any particular case give directions which extend the time limits prescribed by these Regulations.

Site inspections

8.—(1) The Welsh Ministers may inspect the land to which the appeal relates.

(2) Where the Welsh Ministers intend to make an inspection under paragraph (1), they may notify the appellant and any other person as to the date and time of the inspection.

(3) The Welsh Ministers are not required to defer an inspection where any person (including the appellant) is not present at the time appointed.

Further information

9.—(1) The Welsh Ministers may request further representations from—

- (a) the appellant;
- (b) the local planning authority;
- (c) any interested person who made representations in relation to the appeal within 4 weeks of the starting date.

(2) In particular, the Welsh Ministers may in writing request—

- (a) from the person making any representation, a specified number of additional copies of that representation;
- (b) responses to questions posed by the Welsh Ministers about the matters contained in any representation.

(3) Each representation on any particular matter submitted following a request must not exceed 3,000 words and must be submitted in the time and manner specified by the Welsh Ministers.

(4) The Welsh Ministers may disregard any representation which—

- (a) is received out of time or in a manner other than that specified;
- (b) exceeds 3,000 words;
- (c) they regard as vexatious or frivolous; or
- (d) relates to the merits of policy set out in a development plan or any relevant policy statement made or published by the Welsh Ministers.

(5) In the event that a written representation exceeds 3,000 words, the Welsh Ministers may return the representation to the person submitting it with a request that the representation is re-submitted so that it does not exceed 3,000 words and within such time as the Welsh Ministers may specify when returning the representation.

(6) The Welsh Ministers may increase the number of words in paragraph (3) in any particular case and accordingly references to a maximum number of words are to such increased number.

(7) Where the Welsh Ministers exercise their discretion under paragraph (6) the written representation must be accompanied by a written summary containing no more than 1,500 words.

(8) The Welsh Ministers must make all written representations, and written responses to questions, received by them available in such manner as the Welsh Ministers think appropriate as soon as reasonably practicable.

Inspection of documents

10.—(1) The local planning authority must give any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any document sent to or by it in accordance with these Regulations.

(2) For the purposes of paragraph (1), an opportunity will be taken to have been given to a person where the person is notified of—

- (a) publication on a website of the documents mentioned in that paragraph;
- (b) the address of the website;
- (c) the place on the website where the documents may be accessed and how they may be accessed.

Matters which may be raised in an appeal against decisions

11.—(1) The appellant may not raise any matter which was not before the local planning authority at the time specified in paragraph (2) unless the appellant can demonstrate—

- (a) that the matter could not have been raised before that time, or
- (b) that its not being raised before that time was a consequence of exceptional circumstances.

(2) The time specified for the purposes of paragraph (1) is—

- (a) when the decision appealed against was made; or
- (b) when notice of appeal was given in relation to the local planning authority's failure to—
 - (i) give notice to the appellant of their decision on the application;
 - (ii) give notice to the appellant that they have exercised their power under section 70A or 70C of the Planning Act to decline to determine the application; or
 - (iii) give notice that the application has been referred to the Welsh Ministers under section 77 of the Planning Act, section 12 of the Listed Buildings Act or section 20 of the Hazardous Substances Act.

(3) Nothing in paragraph (1) affects any requirement or entitlement to have regard to—

- (a) the provisions of the development plan, or

- (b) any other material circumstances.

Representations to be taken into account

12. In deciding an appeal the Welsh Ministers or the appointed person as the case may be, may disregard any representations, documents, evidence or information received after the relevant time limits.

Prescribed period

13. For the purposes of section 319B of the Planning Act, section 88E of the Listed Buildings Act and section 21B of the Hazardous Substances Act the prescribed period is 6 weeks from the starting date.

Determination of procedure

14.—(1) The Welsh Ministers must in making their determination of procedure under section 319B(1) or section 217(7)(c) of the Planning Act, section 88E(1) of the Listed Buildings Act or section 21B(1) of the Hazardous Substances Act, identify which, if any, matters are to be considered at a hearing or an inquiry.

(2) Notice under section 319B(5), section 88E(5) or section 21B(5) must—

- (a) identify the matters if any to be determined at a hearing or an inquiry;
- (b) identify matters on which the Welsh Ministers require further representations;
- (c) state whether such further representations are to be given in writing or at a hearing or inquiry; or
- (d) contain a statement that the Welsh Ministers intend to determine the application on the basis of written representations.

(3) The Welsh Ministers must notify the appellant and the local planning authority within 6 weeks of the starting date of their determination of procedure under section 217(7)(c) which must set out the information specified in paragraph (2)(a) to (d).

(4) The provisions of regulation 9 apply if any further representations are requested by the Welsh Ministers.