
WELSH STATUTORY INSTRUMENTS

2019 No. 288

**The Developments of National Significance
(Wales) (Amendment) Regulations 2019**

Amendments to the Developments of National Significance (Wales) Regulations 2016

2.—(1) The Developments of National Significance (Wales) Regulations 2016(1) are amended as follows.

(2) In regulation 2, in the definition of “appointed person” for “regulation 11” substitute “regulations 11 and 11A”.

(3) After regulation 11, insert—

“Specified functions: electric lines

11A. In addition to those functions prescribed by regulation 11, the following functions are prescribed for the purposes of paragraph 1 of Schedule 4D to the 1990 Act in respect of development within regulation 3(1)(ab) of the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016(2)

- (a) functions under section 62F of the 1990 Act (developments of national significance: secondary consents)(3);
- (b) functions under section 62J of the 1990 Act (duty to have regard to local impact report)(4);
- (c) determining the application before the end of the determination period in accordance with section 62L(2) of the 1990 Act(5);
- (d) determining an application under section 70(1) of the 1990 Act(6);
- (e) functions under articles 28 and 29 of the 2016 Order;
- (f) functions under these regulations—
 - (i) regulation 19 (proceeding to a decision);
 - (ii) regulation 29 (determination);
 - (iii) regulation 35 (determination);
 - (iv) regulation 36(1) (notice of decision)”.

(4) In regulation 18 before paragraph (1) insert—

“(A1) This regulation applies where the function of determining the application is to be exercised by the Welsh Ministers.”

(1) S.I. 2016/56 (W. 26), amended by S.I. 2017/642 (W. 148).

(2) S.I. 2016/53 (W. 23), amended by S.I. 2016/358 (W. 111). Regulation 3(1)(ab) was inserted by the Developments of National Significance (Specified Criteria, Fees, and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019 (S.I. 2019/283 (W. 65)).

(3) Section 62F was inserted by section 20 of the 2015 Act.

(4) Section 62J was inserted by section 21 of the 2015 Act.

(5) Section 62L was inserted by section 22 of the 2015 Act.

(6) Section 70(1) was amended by paragraph 5 of Schedule 4 to the 2015 Act.

(5) After regulation 18 insert—

“Report: electric lines

18A.—(1) This regulation applies where the function of determining the application is to be exercised by an appointed person.

(2) The appointed person must make a report in writing which must include the appointed person’s conclusions and determination.

(3) The appointed person may cause a hearing or inquiry to be held if after having considered the written representations the appointed person is minded to take into consideration any new evidence or new matter of fact, not being a matter of policy.

(4) Where a hearing or inquiry is to be held, the appointed person must send to the applicant, the local planning authority and persons submitting written representations, a written statement of the matters with respect to which further representations are invited for the purposes of the appointed person’s further consideration of the application.

(5) Those making further representations must ensure that such representations are received by the appointed person within such time as the appointed person states in the invitation under paragraph (4).

(6) Regulation 15(2) to (6) apply to any further representations submitted to the appointed person in accordance with paragraph (5), as if references to the Welsh Ministers were to the appointed person.”

(6) In regulation 19(2) for “prescribed by regulations 15 and 18” substitute “prescribed by regulations 15, 18 and 18A”.

(7) In regulation 20(2) for paragraph (c) substitute—

“(c) the Welsh Ministers or the appointed person have caused a hearing to be held pursuant to regulation 18(5) or regulation 18A(3),”

(8) In regulation 28 before paragraph (1) insert—

“(A1) This regulation applies where the function of determining the application is to be exercised by the Welsh Ministers.”

(9) After regulation 28 insert—

“Procedure and report after a hearing: determination by an appointed person

28A.—(1) This regulation applies where the function of determining the application is to be exercised by an appointed person.

(2) After the close of the hearing—

(a) the assessor (if one is appointed) may make a report in writing to the appointed person in respect of the matters on which the assessor was appointed to assist;

(b) the appointed person must make a report in writing which must include the appointed person’s conclusions and determination.

(3) Where an assessor makes a report in accordance with paragraph (2)(a), the appointed person must—

(a) append it to their report; and

(b) state in that report how far the appointed person agrees or disagrees with the assessor’s report and, where the appointed person disagrees with the assessor, the reasons for that disagreement.

- (4) When making the determination, the appointed person may disregard any written representations or other document received after the hearing has closed.
- (5) If, after the close of the hearing, the appointed person proposes to take into consideration any new evidence or any new matter of fact (not being a matter of policy) which was not raised at the hearing and which the appointed person considers to be material to the determination, the appointed person must not come to a determination without first—
- (a) notifying the applicant, the local planning authority and those persons who submitted written representations and took part in the hearing; and
 - (b) affording them an opportunity of making written representations.
- (6) Those making written representations must ensure that such representations are received by the appointed person within the period stated in the appointed person’s notification under paragraph (5)(a).
- (7) The appointed person may cause a hearing to be re-opened as the person thinks fit.
- (8) Where a hearing is re-opened (whether by the same or a different appointed person)—
- (a) the appointed person must send to the applicant, the local planning authority and persons who submitted written representations or who took part in the hearing, a written statement of the matters with respect to which further representations are invited for the purposes of the appointed person’s further consideration of the application; and
 - (b) regulation 26 applies as if the references to a hearing were references to a re-opened hearing.
- (9) Regulation 15(2) to (6) apply to any evidence or representation in writing submitted to the appointed person in accordance with paragraph (6) of this regulation, as if references to the Welsh Ministers were to the appointed person.
- (10) Regulation 29(b) is to be read as if reference to the period allowed in accordance with regulation 28(6) is reference to the period allowed in accordance with regulation 28A(6).”
- (10) In regulation 30(3) for “Regulations 22 to 25 and 28” substitute “Regulations 22 to 25, 28 and 28A”.
- (11) In regulation 35(b) for “regulation 28(6)” substitute “regulation 28(6) or regulation 28A(6) (in either case as applied by regulation 30(3))”.
- (12) For regulation 40(1) substitute—
- “**40.**—(1) This Part applies where a decision in relation to a secondary consent is made by—
- (a) the Welsh Ministers—
 - (i) by virtue of section 62F(2) of the 1990 Act; or
 - (ii) under any other enactment where the Welsh Ministers consider that the secondary consent is connected to an application under section 62D of the 1990 Act; or
 - (b) an appointed person by virtue of regulation 11A(a).”
- (13) In Schedule 1—
- (a) in the Welsh text omit paragraph 8(b);
 - (b) after paragraph 8 insert—

“Procedure after inquiry: determination by an appointed person

8A. Regulation 28A (as it applies to inquiries by regulation 30(3)) is read as if—

(a) after paragraph (3) there is inserted—

“(3A) Where closed evidence was considered at the inquiry—

(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 decision 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 the level of agreement or disagreement with the closed part of the assessor’s report and, where there is disagreement with the assessor, the reasons for that disagreement.”

(b) in paragraph 8(a) after “applicant” there is inserted “, the appointed representative”.

(14) In Schedule 8—

(a) after paragraph 1(3) insert—

“(3A) The report of the appointed person under regulation 18A (report: electric lines) or regulation 28A (procedure and report after a hearing: determination by an appointed person) must include, in addition to the appointed person’s conclusions and determination in relation to the application, a recommendation or decision in relation to an order under section 247 of the 1990 Act.”

(b) after paragraph (7) insert—

“(8) Regulation 28A is read as if—

(a) in paragraph (4) for “written representations or other document” there is substituted “objection to the making of an order under section 247 of the 1990 Act”;

(b) in paragraph (5) for “submitted written representations” there is substituted “made objections to the making of an order under section 247 of the 1990 Act”;

(c) in paragraph (8)(a) for “submitted written representations” there is substituted “made objections to the making of an order under section 247 of the 1990 Act”.”