



Infrastructure (Wales) Act 2024

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PART 4

EXAMINING APPLICATIONS

Appointing an examining authority

40 Appointing an examining authority

- (1) The Welsh Ministers must appoint a person or a panel of persons to examine each valid application for infrastructure consent.
- (2) The Welsh Ministers may appoint a person or a panel of persons to examine an application to revoke or change an infrastructure consent order.
- (3) The Welsh Ministers must publish a document setting out the criteria to be applied in deciding whether to appoint a person or panel of persons under subsection (2).
- (4) The Welsh Ministers may at any time in relation to an application—
 - (a) revoke an appointment of a person or a person on a panel under this section, or
 - (b) make an appointment of a person or person to a panel under this section.
- (5) Regulations may make further provision for or in connection with the appointment of an examining authority under subsection (1) or (2).
- (6) The regulations may include (among other things) provision for or in connection with—
 - (a) appointing members to a panel (including provision about changing membership of a panel and the consequences of any such changes);
 - (b) allocating functions to persons on a panel and decision-making by a panel;
 - (c) replacing a panel with a person or a new panel or replacing a person with a panel or a new person (and the consequences of such changes);
 - (d) conditions of appointment.

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- (7) In this Act, “examining authority” means a person or panel of persons appointed under this section.

Examining applications

41 Examining authority to examine applications

An examining authority has the function of examining an application in respect of which it is appointed.

42 Choice of inquiry, hearing or written procedure

- (1) The examining authority must determine the procedure for examining each application in respect of which it is appointed.
- (2) A determination must provide for the application to be examined in one or more of the following ways—
 - (a) at a local inquiry;
 - (b) at a hearing;
 - (c) on the basis of the application and any representations in writing (if any) about the application.
- (3) And a determination must provide for examination of the application to include a hearing, unless—
 - (a) the determination provides for a local inquiry to be conducted, or
 - (b) the examining authority considers that a hearing would not assist the examination.
- (4) The examining authority must make a determination before the end of the period specified in regulations.
- (5) A determination may be varied by a further determination at any time before the application being examined is decided under section 60.
- (6) The examining authority must notify any person or person of a description specified in regulations of a determination under this section.
- (7) The Welsh Ministers must publish the criteria to be applied by the examining authority in making determinations under this section.
- (8) The functions of an examining authority under this section are subject to any provision made by regulations under section 43 or 44.

43 Open-floor hearings

- (1) Regulations may require an examining authority to cause an open-floor hearing to be held in the circumstances specified in the regulations.
- (2) The regulations may make any requirement to cause an open-floor hearing to be held subject to conditions (including the exercise of discretion by the examining authority).

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- (3) In this section, an “open-floor hearing” is a hearing at which each interested party is entitled (subject to the examining authority’s powers of control over the conduct of the hearing) to make oral representations about the application.

44 Examination procedure

- (1) Regulations may make provision about the procedure to be followed in connection with the examination of an application under this Part (whether it is examined at a local inquiry, at a hearing or on the basis of the application and any representations in writing (if any) about the application).
- (2) The regulations may include provision about—
- (a) the procedure to be followed in connection with a decision under section 42;
 - (b) the procedure to be followed in connection with a requirement under section 43;
 - (c) the procedure to be followed in connection with matters preparatory or subsequent to an inquiry or hearing or to the making of representations in writing;
 - (d) the conduct of the examination.
- (3) The regulations may include provision about the procedure to be followed—
- (a) where steps have been taken with a view to the holding of an inquiry or hearing which does not take place,
 - (b) where steps have been taken with a view to deciding any matter by an examining authority and the proceedings are the subject of a direction that the matter must instead be decided by the Welsh Ministers,
 - (c) where steps have been taken with a view to deciding any matter by the Welsh Ministers and the proceedings are the subject of a direction that the matter must instead be decided by the examining authority, or
 - (d) where steps have been taken in pursuance of a direction mentioned in paragraph (b) or (c) and a further direction is made revoking that direction,
- and may provide that such steps are to be treated as compliance, in whole or in part, with the requirements of the regulations.
- (4) The regulations may—
- (a) specify a time limit within which any party to proceedings must submit representations in writing and any supporting documents;
 - (b) enable the examining authority to extend the time limit in a particular case;
 - (c) enable the examining authority to make a report under section 52 taking into account only the representations in writing and supporting documents as were submitted within the time limit;
 - (d) enable the examining authority or the Welsh Ministers (as the case may be) to proceed to a decision taking into account only the representations in writing and supporting documents as were submitted within the time limit;
 - (e) enable the examining authority after giving the parties notice in writing of their intention to do so, to make a report under section 52 even though no representations in writing were submitted within the time limit, if it appears to it that it has sufficient material before it to make a recommendation on the merits of the application;

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- (f) enable the examining authority or the Welsh Ministers (as the case may be), after giving the parties written notice of its or their intention to do so, to proceed to a decision even though no representations in writing were submitted within the time limit, if it appears to it or them that it has or they have sufficient material before it or them to reach a decision on the merits of the application;
- (g) make provision about the location of proceedings at a hearing or local inquiry;
- (h) make provision about the conduct of proceedings at a hearing or local inquiry wholly or partly by means of equipment or other facility that enables persons who are not in the same place to attend the hearing or local inquiry and participate in it;
- (i) make provision about broadcasting or recording the proceedings at a hearing or local inquiry.

45 Power to enter land in connection with examination

- (1) A person authorised in writing by the Welsh Ministers may at a reasonable time enter land in Wales for the purpose of inspecting the land in connection with the examination of applications under this Part.
- (2) A person authorised under subsection (1) to enter land—
 - (a) must, if required, produce evidence of the person’s authority, and state the purpose of the person’s entry, before entering,
 - (b) may not demand admission as of right to any land which is occupied unless 14 days’ notice of the intended entry has been given to the occupier,
 - (c) may take on to the land any other persons that are necessary,
 - (d) must, if leaving the land at a time when no owner or occupier is present, leave it as effectively secured against trespassers as the person found it, and
 - (e) must comply with any other conditions subject to which the Welsh Ministers’ authorisation is given.
- (3) A person commits an offence if the person intentionally obstructs a person acting in the exercise of power under subsection (1).
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine.

46 Power to enter Crown land in connection with examination

- (1) Section 45 applies to Crown land subject to subsections (2) and (3).
- (2) A person must not enter Crown land unless the person (“P”) has the permission of—
 - (a) a person appearing to P to be entitled to give it, or
 - (b) the appropriate Crown authority.
- (3) Subsections (2)(b), (3) and (4) of section 45 do not apply in relation to anything done by virtue of this section.

47 Power of examining authority to hold local inquiry

- (1) An examining authority may hold a local inquiry for the purposes of examining an application.

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- (2) An examining authority holding a local inquiry may by summons require any person—
 - (a) to attend the inquiry in accordance with the requirements specified in the summons under subsection (4) and to give evidence;
 - (b) to produce any documents in the person’s possessions or under the person’s control which relate to any matter in question at the inquiry.
- (3) The examining authority holding the inquiry may take evidence on oath, and for that purpose may administer oaths.
- (4) A summons must specify—
 - (a) the time at which attendance is required, and
 - (b) the place at which attendance is required or, if attendance is to be facilitated by other means, instructions on how to attend by those means.
- (5) A summons under this section does not require a person to attend the inquiry (whether attendance is required at a place or facilitated by other means) unless the person’s necessary expenses of attending are paid or offered to the person.
- (6) A person may not be required under this section to produce the title (or any instrument relating to the title) of any land which does not belong to a local authority.
- (7) It is an offence for a person to—
 - (a) refuse or deliberately fail to comply with a requirement of a summons issued under this section, or
 - (b) deliberately alter, suppress, conceal or destroy a document the person is required, or is liable to be required, to produce under this section.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction or conviction on indictment to a fine.
- (9) In this section, “local authority” means the council of a county, county borough or community in Wales.

48 Access to evidence at inquiry

- (1) At a local inquiry held under section 47—
 - (a) oral evidence must be heard in public, and
 - (b) documentary evidence must be available to the public for inspection.
- (2) But if a ministerial authority is satisfied that both of the conditions in subsection (3) are met in relation to such an inquiry, it may direct the examining authority conducting the inquiry that evidence of a kind specified in the direction is to be heard or available for inspection at that inquiry only by persons who are specified in the direction or of a kind specified in it.
- (3) The conditions are—
 - (a) that giving evidence of a particular description in public or making it available for public inspection would be likely to result in the disclosure of information about—
 - (i) national security, or
 - (ii) measures taken or to be taken to ensure the security of any land or other property, and

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- (b) that the public disclosure of the information would be against the national interest.
- (4) If a ministerial authority is considering giving a direction under this section, the Counsel General may appoint a person (“an appointed representative”) to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if the direction is given.
- (5) If there is no appointed representative when a ministerial authority gives a direction under this section, the Counsel General may at any time appoint a person as an appointed representative for the purposes of the inquiry.
- (6) Regulations may make provision about—
 - (a) the procedure to be followed by a ministerial authority before it gives a direction under this section in a case where there is an appointed representative;
 - (b) the functions of an appointed representative.
- (7) In this section and section 49, “ministerial authority” means the Welsh Ministers or the Secretary of State.

49 Payment of appointed representative where access to evidence restricted

- (1) This section applies if a person is appointed under section 48 as an appointed representative for the purposes of a local inquiry, whether or not the inquiry takes place.
- (2) A ministerial authority may direct a person (“the responsible person”) to pay the fees and expenses of the appointed representative.
- (3) The responsible person must be a person the ministerial authority considers is, or would have been, interested in the inquiry in relation to—
 - (a) national security, or
 - (b) the measures taken or to be taken to ensure the security of any land or other property.
- (4) If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount must be decided by the ministerial authority that gave the direction.
- (5) The ministerial authority must cause the amount agreed between the appointed representative and the responsible person, or decided by the ministerial authority, to be certified.
- (6) The certified amount is recoverable from the responsible person as a debt.

50 Assessors

- (1) The examining authority or the Welsh Ministers may appoint a person to act as an assessor to assist the examining authority in the examination of an application under this Part.
- (2) A person may be appointed as an assessor only if it appears to the examining authority or the Welsh Ministers (as the case may be) that the person has expertise that makes the person suitable to assist the examining authority.

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51 Legal assistance

- (1) The examining authority or the Welsh Ministers may appoint a barrister or solicitor to provide legal advice and assistance to the examining authority in connection with its examination of an application under this Part.
- (2) The assistance that may be given by a person appointed under subsection (1) includes carrying out on behalf of the examining authority any oral questioning of a person making representations at a hearing or inquiry.

52 Reports by examining authority

- (1) This section applies to—
 - (a) an examining authority appointed under section 40(1) if the Welsh Ministers have the function of deciding the application;
 - (b) an examining authority appointed under 40(2), if the Welsh Ministers have the function of deciding the application under regulations made under section 91.
- (2) The examining authority must make a report to the Welsh Ministers on the application it examines setting out—
 - (a) the examining authority’s findings and conclusions in respect of the application, and
 - (b) the examining authority’s recommendations as to the decision to be made on the application.

53 Power to direct further examination

- (1) Following receipt of a report under section 52, the Welsh Ministers may direct the examining authority to re-open its examination of the application in accordance with any requirements specified in the direction.
- (2) The duty of an examining authority in section 52 applies to any further examination required by virtue of this section.
- (3) A direction under subsection (1) must—
 - (a) include a statement explaining why it is given;
 - (b) be published as soon as reasonably practicable after it is given.

54 Orders relating to costs of parties on examination proceedings

- (1) This section applies to proceedings in connection with the examination of an application under this Part (whether it is considered at a local inquiry, at a hearing or on the basis of representations in writing).
- (2) The Welsh Ministers may make orders about—
 - (a) the costs of the applicant, the Welsh Ministers, a planning authority or other party to proceedings (which may include costs in respect of an inquiry or hearing that does not take place), and
 - (b) the person or persons who must pay the costs.
- (3) But the Welsh Ministers may not order a person to pay the costs of another party unless they are satisfied that—
 - (a) the person has behaved unreasonably in relation to the proceedings, and

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- (b) the person's unreasonable behaviour has caused the other party to incur unnecessary or wasted expenditure.
- (4) Costs payable by virtue of subsection (2) may be recovered as if they were payable under an order of the High Court, if the High Court so orders on the application of the person to whom the costs are due.
- (5) The power to make orders under this section must also be exercised in accordance with any provision made under section 44 (examination procedure).