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WELSH STATUTORY INSTRUMENTS

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**2003 No. 395 (W.54)**

**TOWN AND COUNTRY PLANNING, WALES**

**The Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003**

*Made* - - - - - *25th February 2003*

*Coming into force* - - - - - *1st April 2003*

The National Assembly for Wales, in exercise of the powers conferred on the Secretary of State, and now vested in the National Assembly for Wales, by sections 175, 323 and 333 of the Town and Country Planning Act 1990(1) and sections 40, 89(1), 91(1) and 93(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990(2), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003 and come into force on 1st April 2003.

(2) These Regulations apply to Wales.

**Interpretation**

2. In these Regulations-

“the appellant” (“*yr apelydd*”) means a person giving notice of appeal to the National Assembly;

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

“enforcement notice” (“*hysbysiad gorfodi*”) means a notice issued under section 172(1) of the Planning Act or section 38(1) of the Listed Buildings Act;

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- (1) 1990 c. 8; the functions of the Secretary of State under sections 175 and 323 were, in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and are now vested in the National Assembly for Wales by article 4 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253 (W.5)). Section 175 contains amendments not relevant to these Regulations. Section 323 was amended by paragraph 26 of Schedule 3 to the Tribunals and Inquiries Act 1992 (c. 53).
- (2) 1990 c. 9; the functions of the Secretary of State under these sections were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Section 89(1) applies the regulation-making provisions contained in section 323 of the Town and Country Planning Act 1990 to the Planning (Listed Buildings and Conservation Areas) Act 1990 for the purposes of these Regulations.

“the Enforcement Notices and Appeals Regulations” (“*y Rheoliadau Hysbysiadau Gorfodi ac Apelau*”) means the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003(3);

“the Listed Buildings Act” (“*y Ddeddf Adeiladau Rhestredig*”) means the Planning (Listed Buildings and Conservation Areas) Act 1990(4);

“local planning authority” (“*awdurdod cynllunio lleol*”) means the body who issue the relevant enforcement notice;

“the National Assembly” (“*y Cynulliad Cenedlaethol*”) means the National Assembly for Wales;

“notice of appeal” (“*hysbysiad apêl*”) means a notice of appeal under section 174(3) of the Planning Act or section 39(2) of the Listed Buildings Act;

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

“questionnaire” (“*holiadur*”) means a document in the form supplied by the National Assembly to local planning authorities for the purpose of proceedings under these Regulations;

reference to section 39 of the Listed Buildings Act includes reference to that section as applied by section 74(3) of that Act (appeal against conservation area enforcement notice);

“starting date” (“*dyddiad dechrau*”) means the date of the National Assembly’s written notice to the appellant and the local planning authority under regulation 4; and

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

### **Application of these Regulations**

**3.**—(1) These Regulations apply where, after they come into force, an appellant informs the National Assembly in the notice of appeal of a wish for the appeal to be disposed of on the basis of written representations.

(2) Where an appeal under section 174 of the Planning Act (appeal against enforcement notice) or section 39 of the Listed Building Act (appeal against listed building, or conservation area, enforcement notice) is not being disposed of on the basis of written representations and the appellant and the local planning authority inform the National Assembly that they wish it to be disposed of on that basis, these Regulations apply to the proceedings to such extent as the National Assembly may specify having regard to any steps already taken in relation to those proceedings.

(3) These Regulations cease to apply to proceedings if the National Assembly informs the appellant and the local planning authority that it will give them an opportunity of appearing before and being heard by a person appointed by it for the purpose.

### **Notification of receipt of appeal**

**4.** The National Assembly must, as soon as practicable, advise the appellant and the local planning authority in writing of-

- (a) the starting date;
- (b) the reference number allocated to the appeal;
- (c) the address to which written communications to the National Assembly about the appeal are to be sent; and

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(3) [S.I. 2003/394 \(W.53\)](#).

(4) [1990 c. 9](#); section 39 was amended by paragraph 3 of Schedule 3 to the Planning and Compensation Act [1991 \(c. 34\)](#), Schedule 3 was amended by section 25 of, and Schedule 3, Part II, paragraph 28 to, that Act and by [S.I. 1997/2971](#). Section 12 was amended by section 17 of the Transport and Works Act [1992 \(c. 42\)](#). There are other amendments not relevant to these Regulations.

- (d) the ground, or grounds, under section 174(2) of the Planning Act or section 39(1) of the Listed Buildings Act, as the case may be, on which the appeal has been brought.

### **Notice to interested parties**

5.—(1) The local planning authority must, within 2 weeks of the starting date, give written notice of the appeal to any-

- (a) person on whom a copy of the enforcement notice has been served;
  - (b) occupier of property in the locality in which the land to which the enforcement notice relates is situated; and
  - (c) other persons who in the opinion of the local planning authority are affected by the breach of planning control or contravention of listed building or conservation area control which is alleged in the enforcement notice.
- (2) The notice given under paragraph (1) must include-
- (a) the name of the appellant and the address of the land to which the appeal relates;
  - (b) the starting date;
  - (c) the reference number allocated to the appeal;
  - (d) a description of the alleged breach of control;
  - (e) in the case of an appeal against an enforcement notice under section 172 of the Planning Act, a statement setting out the additional matters specified in regulation 3 of the Enforcement Notices and Appeals Regulations;
  - (f) the ground, or grounds, under section 174(2) of the Planning Act or section 39(1) of the Listed Buildings Act, as the case may be, on which the appeal is made;
  - (g) a statement that representations may be sent to the National Assembly so as to be received by it within 6 weeks of the starting date and the address to which such representations should be sent;
  - (h) a statement that any representations made by any person mentioned in paragraph (1) will be sent to the appellant and the local planning authority; and
  - (i) a statement that any such representations will be considered by the National Assembly when determining the appeal unless any person mentioned in paragraph (1) withdraws them within 6 weeks of the starting date.

### **Questionnaire**

6.—(1) The local planning authority must, so as to be received within 2 weeks of the starting date, send to the National Assembly and copy to the appellant-

- (a) a completed questionnaire; and
  - (b) a copy of each of the documents referred to in it.
- (2) The questionnaire must state the date on which it is sent to the National Assembly.

### **Representations**

7.—(1) The notice of appeal, the documents accompanying it and any statement sent under regulation 5 of the Enforcement Notices and Appeals Regulations will comprise the appellant's representations in relation to the appeal.

(2) The local planning authority may elect to treat the questionnaire, the documents sent with it and the statement sent under regulation 8 of the Enforcement Notices and Appeals Regulations, as its representations in relation to the appeal; and, where it does so, it must notify the National Assembly

and the appellant accordingly when sending the questionnaire or sending one copy in accordance with regulation 6.

(3) If the appellant wishes to make any further representations to those in paragraph (1), the appellant must send 2 copies of those further representations to the National Assembly so as to be received by it within 6 weeks of the starting date.

(4) Where the local planning authority does not elect as described in paragraph (2), it must send 2 copies of its written representations to the National Assembly so as to be received by it within 6 weeks of the starting date and these must include-

- (a) a summary of the local planning authority's response to each of the grounds on which the appeal is brought; and
- (b) a statement as to whether it would be prepared to grant planning permission for the matters alleged in the enforcement notice to constitute a breach of planning control, or to grant 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, and, if so, particulars of the conditions, if any, which it would wish to impose on the permission or consent.

(5) Any representations made to the National Assembly under paragraph (3) or (4) must be dated and sent to the National Assembly on the date they bear.

(6) The National Assembly must, as soon as practicable after receipt, send a copy of any representations made to it by the local planning authority to the appellant and must send a copy of any representations made to it by the appellant to the local planning authority.

(7) The appellant and the local planning authority must send 2 copies of any comments they have on each other's representations to the National Assembly so as to be received by it within 9 weeks of the starting date; and the National Assembly must, as soon as practicable after receipt, send a copy of these further comments to the other party.

(8) The National Assembly may disregard further information from the appellant and the local planning authority which was not received within 9 weeks of the starting date unless that further information has been requested by it.

### **Third party representations**

**8.**—(1) If an interested person notified under regulation 5(1) wishes to send representations to the National Assembly, that person must do so in order to ensure that those representations are received by it within 6 weeks of the starting date.

- (2) The National Assembly must-
  - (a) send to the appellant and the local planning authority, as soon as practicable after receipt, a copy each of all of the representations received from interested persons; and
  - (b) specify a period of not less than 2 weeks within which any comments on the representations must be received.

(3) The National Assembly may disregard comments made by the local planning authority under paragraph 2(b) where the authority failed to notify interested persons in accordance with regulation 5.

### **Allowing further time**

**9.** The National Assembly may in a particular case give directions setting later time limits than those prescribed by these Regulations.

### **Decision on appeal**

**10.**—(1) The National Assembly may proceed to a decision on an appeal taking into account only such written representations as have been received within the relevant time limits.

(2) The National Assembly may, after giving the appellant and the local planning authority written notice of its intention to do so, proceed to a decision on an appeal notwithstanding that no written representations have been made within the relevant time limits if it appears to it that it has sufficient material before it to enable it to reach a decision on the merits of the case.

(3) In this regulation, “relevant time limits” (“*terfynau amser perthnasol*”) means the time limits prescribed by these Regulations or, where the National Assembly has exercised its power under regulation 9, any later time limits.

### **Transmission of documents**

**11.**—(1) Any document required or authorised to be sent by one person to another under these Regulations may be sent by post or by means of electronic communication and any reference in these Regulations, however expressed, to writing is to be construed as including a reference to a form capable of being stored on, transmitted to and from, and read by means of a computer.

(2) Where, under these Regulations, there is a requirement that a copy of a statement, representation notice or other document should be sent by one person to another then, if that copy is sent by means of electronic communication, any further requirement that more than one copy should be sent is to be disregarded.

### **Transitional provisions**

**12.**—(1) Subject to paragraph (2), any appeal to which the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1991<sup>(5)</sup> (“the 1991 Regulations”) applied which has not been determined on the date when these Regulations come into force is to be continued under the 1991 Regulations.

(2) Where an appeal to which the 1991 Regulations applied is subsequently remitted to the National Assembly for re-determination in proceedings before any court, and is to be disposed of on the basis of written representations, the decision is to be re-determined in accordance with these Regulations and not the 1991 Regulations.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998<sup>(6)</sup>

25th February 2003

*D.Elis-Thomas*  
The Presiding Officer of the National Assembly

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<sup>(5)</sup> S.I. 1991/2804, as amended by S.I 1991/1492 and 1992/1904.

<sup>(6)</sup> 1998 c. 38.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Section 174 of the Town and Country Planning Act 1990, section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and that section as applied by section 74(3) of that Act, confer a right of appeal against an enforcement notice, a listed building enforcement notice and a conservation area enforcement notice, respectively, on a person having an interest in the land to which the enforcement notice relates or who is a relevant occupier.

An appellant and the local planning authority are entitled in any appeal proceedings to appear before and be heard by a person appointed by the National Assembly for Wales (“the National Assembly”) but they may agree to the appeal being determined on the basis of written representations and supporting documents.

These Regulations lay down the procedure and time limits in connection with appeals against enforcement notices which are to be disposed of on the basis of written representations.

The main steps in the procedure are -

- (a) upon receipt of a notice of appeal, the National Assembly will inform the appellant and the local planning authority of the starting date, the appeal reference number, the address to which written representations may be sent and the grounds on which the appeal is brought (regulation 4);
- (b) the local planning authority must, within 2 weeks of the starting date, notify interested parties of the appeal (regulation 5), and must send a completed questionnaire and any documents referred to in it to the National Assembly (regulation 6);
- (c) the local planning authority may elect to treat the questionnaire, documents sent with it, and the statement provided under regulation 8 of the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, as their written representations, but where they do not so elect they have 6 weeks from the starting date to send written representations to the National Assembly (regulation 7);
- (d) the appellant’s representations are the notice of appeal, documents accompanying it and any statement sent under regulation 5 of the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, however they may send further representations within 6 weeks of the starting date to the National Assembly (regulation 7);
- (e) the appellant and local planning authority have 9 weeks from the starting date to send to the National Assembly representations on each others' representations (regulation 7);
- (f) an interested party, notified under regulation 5 of these Regulations, has 6 weeks from the starting date to send representations to the National Assembly (regulation 8); and
- (g) the National Assembly is given power to disregard written representations not received within the relevant time limit and it may proceed to a decision without receiving any written representations within the time limits after giving notice to the appellant and local planning authority of its intention to do so (regulation 10).

Regulation 11 authorises documents, which are sent in accordance with these Regulations, to be sent by means of electronic communication.