

# Welsh Statutory Instrument 2002 No. 1772 (W.168)

## **The Wildlife and Countryside (Sites of Special Scientific Interest, Appeals) (Wales) Regulations 2002**

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### STATUTORY INSTRUMENTS

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#### **2002 No. 1772 (W.168)**

#### **COUNTRYSIDE, WALES**

#### The Wildlife and Countryside (Sites of Special Scientific Interest, Appeals) (Wales) Regulations 2002

*Made*

*9th July 2002*

*Coming into force*

*31st July 2002*

The National Assembly for Wales ("the National Assembly"), in exercise of the powers conferred on the Secretary of State by sections 28F(6) and 28L(8) of the Wildlife and Countryside Act 1981<sup>[1]</sup> and paragraphs 11(2) and 17(3) of Schedule 11 to the Countryside and Rights of Way Act 2000<sup>[2]</sup> and which are now exercisable by the National Assembly<sup>[3]</sup>, hereby makes the following Regulations:

#### **Citation, commencement, and application**

**1.** - (1) These Regulations may be cited as the Wildlife and Countryside (Sites of Special Scientific Interest, Appeals) (Wales) Regulations 2002.

(2) These Regulations come into force on 31st July 2002.

(3) These Regulations apply to Wales.

## Interpretation

### 2. - (1) In these Regulations -

"the 2000 Act" ("*Deddf 2000*") means the Countryside and Rights of Way Act 2000;

"the 1981 Act" ("*Deddf 1981*") means the Wildlife and Countryside Act 1981;

"appointed person" ("*person penodedig*") means a person appointed for the time being by the National Assembly under section 28F(8) or section 28L(10) of the 1981 Act to consider the written representations relating to an appeal or, if the appeal is to take the form of a local inquiry or hearing, to conduct the inquiry or hearing, and to determine the appeal if authorised to do so;

"a consent appeal" ("*apêl cydsyniad*") means an appeal under sections 28F(1) or 28F(2) of the 1981 Act;

"the Council" ("*y Cyngor*") means the Countryside Council for Wales;

"a deemed refusal appeal" ("*apêl gwrthodiad tybiedig*") means a consent appeal under section 28F(2) of the 1981 Act;

"electronic communication" ("*cyfathrebu electronig*") means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) by means of a telecommunications system (within the meaning of the Telecommunications Act 1984<sup>[4]</sup> or by other means but while in an electronic form;

"electronic form" ("*ffurf electronig*") means a form capable of being stored on, transmitted to and from, and read by means of a computer;

"legible form" ("*ffurf ddarllenadwy*") means, in relation to a document sent by means of an electronic communication, a form in which it is capable of being read on a computer screen;

"a notice of appeal" ("*hysbysiad apêl*") means a notice by which a consent appeal, a management notice appeal or a stop notice appeal, as the case may be, is brought;

"a management notice appeal" ("*apêl hysbysiad reoli*") means an appeal under section 28L(1) of the 1981 Act;

a "regulation 7(1)(b) party" ("*parti rheoliad 7(1)(b)*") means a person to whom a notice is required to be sent by regulation 7(1)(b) of these Regulations;

"the starting date" ("*y dyddiad dechrau*") has the meaning given in regulation 9(3);

"a stop notice appeal" ("*apêl hysbysiad stop*") means an appeal under paragraph 11(1) of Schedule 11 to the 2000 Act.

### (2) In these Regulations, "the decision notice" ("*yr hysbysiad penderfyniad*") means -

(a) in the case of a consent appeal, the notice giving the consent of the Council subject to conditions or for a limited period under section 28E(4) of the 1981 Act or the notice given by the Council under section 28E(5) or section 28E(6) of the 1981 Act, as the case may be;

(b) in the case of a management notice appeal, the notice given by the Council under section 28K of the 1981 Act;

(c) in the case of a stop notice appeal, the notice given by the Council under paragraph 9(3) of Schedule 11 to the 2000 Act;

to which the appeal relates.

### **Contents of a notice of appeal**

**3.** A notice of appeal must -

(a) state the full name and address of the appellant and of any person authorised to act on behalf of the appellant in relation to the appeal;

(b) except in the case of a deemed refusal appeal, be accompanied by a copy of the decision notice;

(c) in the case of a consent appeal relating to a refusal to give consent for an operation, give particulars of the operation for which consent has been refused (unless such particulars are given in the decision notice);

(d) in the case of a management notice appeal in relation to which the grounds of appeal include a ground that some owner or occupier of land other than the appellant should take all or any of the measures specified in the decision notice, or should pay all or part of their cost, state the full name and address of any such person;

(e) state the grounds of the appeal;

(f) if the appellant wishes to be heard by a person appointed by the National Assembly in connection with the appeal (rather than that the appeal be determined on the basis of written representations), say so and further state whether the appellant wishes to be heard at a local inquiry or, alternatively, at a hearing and, if a hearing, whether the appellant wishes the hearing to be held in private if the person hearing the appeal agrees; and

(g) if the appellant and the Council have agreed in writing that the time by which the notice of appeal must be received should be longer than that specified by the 1981 Act or, in the case of a management notice appeal, that the period which is to apply under Regulation 6(2)(a)(i) is to be longer than two months, be accompanied by a copy of the document recording that agreement.

**4.** A notice of appeal may be in either the English language or in the Welsh language but if the appellant wishes the appeal to be dealt with in whole or in part through the medium of the language other than that in which the notice of appeal is expressed it should incorporate or be accompanied by a request to that effect.

### **Starting an appeal**

**5.** An appeal is started by sending a notice of appeal to the National Assembly.

### **Action by the National Assembly on receipt of a notice of appeal**

**6.** - (1) The National Assembly must, as soon as reasonably practicable after receiving a notice of appeal, send a copy of it to the Council, together with a copy of any other document which accompanied it.

(2) Paragraph (1) does not apply -

(a) to a notice of appeal received by the National Assembly:

(i) in the case of any appeal other than a deemed refusal appeal, after the expiry of the period of two months (or such longer period as has been agreed in writing by the appellant and the Council) beginning with the date of the decision notice; or

(ii) in the case of a deemed refusal appeal, after the expiry of the period of six months (or such longer period as has been agreed in writing by the appellant and the Council) beginning with the date on which the appellant sent to the Council notice of a proposal to carry out the operation for which consent is treated as having been refused;

(b) to a notice of appeal in respect of which the appellant has failed, in a material respect, to comply with the requirements of regulation 3, but in such a case the National Assembly may give notice to the appellant of the nature of that failure and of the steps necessary to rectify it and if the appellant, within 14 days of receipt of such notice, takes the steps required, this sub-paragraph will no longer apply to the notice of appeal in question.

#### **Action by the Council on receipt of a copy of a notice of appeal**

7. - (1) The Council must, within 14 days of receiving from the National Assembly a copy of a notice of appeal, give notice in writing -

(a) in the case of a consent appeal, to any person (other than the appellant) who made representations to the Council in respect of the decision on the part of the Council to which the appeal relates (or, in the case of a deemed refusal appeal, in respect of any decision which the Council might have taken if the appellant had not treated the Council as having refused consent);

(b) in the case of a management notice appeal in relation to which the grounds of appeal include a ground that some owner or occupier of land other than the appellant should take all or any of the measures specified in the decision notice, or should pay all or part of their cost, to any such person;

(c) to any other person who appears to the Council to have a sufficient interest in the subject matter of the appeal.

(2) A notice under paragraph (1) must -

(a) identify the site of special scientific interest to which the appeal relates;

(b) be dated;

(c) be accompanied by a copy of the notice of appeal and of any decision notice;

(d) state that, within 28 days beginning with the date of the notice, the recipient may -

(i) make representations in writing, which may be in either the English language or the Welsh language, to the National Assembly with respect to the appeal and that, in that event, copies of those representations will be provided to the appellant and to the Council; and

(ii) request in writing to the National Assembly to be notified of the decision on the appeal;

(e) state that if a local inquiry is to be held, or a hearing is to be held which is to be wholly or partly in public, a recipient who makes representations in accordance with paragraph (2)(d)(i) will be notified of the date of the inquiry or hearing.

(3) A notice under paragraph (1) which is sent to a regulation 7(1)(b) party must be accompanied by a statement that if that party wishes to be heard by a person appointed by the National Assembly in connection with the appeal, (rather than that the appeal be determined on the basis of written representations), any representations made to the National Assembly by that party should be accompanied by a statement to that effect and if so by a further statement as to whether that party wishes to be heard at a local inquiry or, alternatively, at a hearing .

### **Response by the Council to an appeal**

8. The Council must, within 28 days of receiving from the National Assembly a copy of a notice of appeal, send to the National Assembly, to the appellant and to any regulation 7(1)(b) party -

- (a) a statement whether it opposes the appeal and, if so, of its grounds for doing so;
- (b) in the case of a consent appeal, a copy of any relevant notice of a proposal to carry out the operation (together with accompanying plans and documents) given to the Council under section 28E(1) of the 1981 Act;
- (c) copies of any relevant correspondence between the appellant and the Council;
- (d) copies of any representations made to the Council by any person other than the appellant in respect of the decision on the part of the Council to which the appeal relates (or, in the case of a deemed refusal appeal, in respect of any decision which the Council might have taken if the appellant had not treated the Council as having refused consent);
- (e) a statement of the names and addresses of any persons to whom the Council have sent a notice under regulation 7(1) and the date on which such notice was sent; and
- (f) if the Council wishes to be heard by a person appointed by the National Assembly in connection with the appeal, a statement to that effect and if so, whether the Council wishes to be heard at a local inquiry or, alternatively, at a hearing and, if a hearing, whether the Council objects to the hearing being held in private if the appellant so requests.

### **Notification of appeal procedure**

9. - (1) The National Assembly must, no earlier than 28 days after the latest of any dates identified by the Council in accordance with regulation 8(e) as the dates on which the Council sent notices under regulation 7(1), but as soon as practicable thereafter, send to:

- (a) the appellant;
- (b) the Council; and

(c) any person to whom a notice was sent under regulation 7(1),

a notice specifying the form which the appeal is to take.

(2) The notice given under paragraph (1) must be dated and must state whether the appeal is to take the form of:

(i) a local inquiry;

(ii) a hearing; or

(iii) neither, and will therefore be determined on the basis of written representations.

(3) The date of the notice given under paragraph (1) is the "starting date" for the purposes of these Regulations.

(4) The notice given under paragraph (1) must also state whether the person who is to be appointed to consider such written representations or, if the appeal is to take the form of a local inquiry or hearing, to conduct the inquiry or hearing, is to be the person to whom the function of determining the appeal is to be delegated but if it does so the National Assembly may at any time decide instead that it is to determine the appeal itself and must, if it so decides, give notice of that decision, as soon as reasonably practicable, to those persons to whom such notice under paragraph (1) has been given.

#### **Provision of other representations to the appellant and to the Council**

**10.** The National Assembly must, as soon as reasonably practicable after they are received, send to the appellant, to the Council and to any regulation 7(1)(b) party, copies of any representations received by the National Assembly from anyone other than the Council and the appellant, which the National Assembly intends to take into account in relation to the appeal.

#### **Withdrawal of an appeal**

**11.** - (1) The appellant may withdraw an appeal by giving notice in writing to the National Assembly of a wish to do so.

(2) The National Assembly must, as soon as reasonably practicable after receiving notice of withdrawal of an appeal, give notice of that fact to all those persons to whom a notice was given under regulation 9(1).

#### **Change to the form of an appeal**

**12.** If at any time it appears to the National Assembly that it is more appropriate that the appeal should be determined in a way which is different from the form which was notified under regulation 9(2) it may, after obtaining any consent of the Council or of the appellant required by the provisions of the 1981 Act, determine that the appeal is to continue in a form other than that notified and may give any consequential guidance as to the procedure to be applied in relation to the appeal, including identifying any steps which are required to be taken by the parties under these Regulations which are to be deemed to have already been taken and varying as necessary the time within which any such step which has not already been taken must be taken.

#### **Appeals determined on the basis of written representations**

**13.** - (1) This regulation applies to an appeal which is to be determined on the basis of written representations.

(2) The Council must, within 28 days of the starting date, send to the National Assembly, to the appellant and to any regulation 7(1)(b) party, a copy of any further written representations or other documents, in addition to those already sent to the National Assembly in accordance with regulation 7, on which it wishes to rely in opposing the appeal or, if it does not wish to rely on any such further representations or other documents, a notice to that effect.

(3) The appellant must, within 28 days of receiving any further representations or other documents in accordance with paragraph (2) (or a notice that the Council does not intend to rely on any), send to the National Assembly, to the Council and to any regulation 7(1)(b) party, a copy of any further written representations or other documents, in addition to those already sent to the National Assembly in accordance with regulation 3, on which the appellant wishes to rely in support of the appeal or, if the appellant does not wish to rely on any such further representations or other documents, a notice to that effect.

(4) The National Assembly may, in a particular case, invite the Council and the appellant to send to the National Assembly, to each other and to any regulation 7(1)(b) party, within such reasonable time as it may specify, such further representations or other documents as it believes are necessary in order to enable the appeal to be decided, including any comments on any representation received by the National Assembly after the starting date from any person other than the appellant and the Council which the National Assembly proposes to take into account when deciding the appeal and of which the National Assembly has sent copies to the appellant and the Council.

#### **Appeal to be decided after a hearing**

**14.** - (1) This regulation applies to an appeal which is to be decided after a hearing.

(2) Except as otherwise provided in these Regulations, the appointed person may determine the procedure relating to a hearing.

(3) The Council and the appellant must, within 42 days of the starting date, send to the National Assembly, to each other and to any regulation 7(1)(b) party, a written statement (together with copies of any documents, photographs, maps or plans referred to in that statement) containing full particulars of the case which that person proposes to put forward at the hearing.

(4) The National Assembly may by notice in writing require the Council or the appellant to provide, within such reasonable time as it may require, such further specified information as appears to the National Assembly to be relevant to the appeal and any party required to provide such further information must, when sending it to the National Assembly, send a copy to the other party.

(5) The National Assembly must, not less than 42 days before the date which it has fixed for the holding of the hearing (or such shorter period as the appellant and the Council may agree), give the appellant, the Council and any regulation 7(1)(b) party notice of the date time and place of that hearing and the name of the person appointed to conduct it.

(6) The National Assembly must, not less than 21 days before the date fixed for the hearing -

(i) publish, in at least one newspaper circulating in the area in which the land to which the appeal relates is situated, a notice containing the same information as that required to be given to the appellant and the Council under paragraph (5); and

(ii) send a copy of that notice to any person to whom a notice was sent under

regulation 7(1)(a) or 7(1)(c) and who has made representations in writing to the National Assembly.

(7) The National Assembly may vary the date fixed for the hearing, in which case paragraphs (4) and (5) apply to the date as varied as they apply to the date originally fixed.

(8) The National Assembly may vary the time or place fixed for the hearing, in which case it must give such notice of such variation as appears to it to be reasonable.

(9) The persons entitled to be heard at a hearing are -

(a) the appellant;

(b) the Council;

(c) any regulation 7(1)(b) party,

(d) any person to whom a notice was sent under regulation 7(1)(a) or 7(1)(c) and who has made representations in writing to the National Assembly.

(10) The person who conducts the hearing may permit any other person to be heard and such permission must not be unreasonably withheld.

(11) The hearing may be held wholly or partly in private if the appellant so requests and the person conducting the hearing agrees.

(12) The person conducting the hearing may from time to time adjourn it and if the date and place of the resumed hearing are announced at the hearing when it is adjourned, no further notice is to be required.

### **Appeal to be decided after a local inquiry**

**15.** The National Assembly must, at the same time as sending a notice under regulation 9(1) that an appeal is to take the form of a local inquiry, give notice in writing to the persons referred to in regulation 9(1)(a),(b) and (c) of the procedure which is to apply and may from time to time thereafter give such further guidance as to the procedure to be followed as is appropriate.

### **Site visit**

**16.** - (1) The appointed person may visit the land to which the appeal relates but must give the appellant and the Council reasonable notice in writing of an intention to do so and give them or any person authorised to act on their behalf a reasonable opportunity of being present.

(2) An appellant must take such steps as are reasonably within the appellant's power to enable the appointed person to obtain access to the land to be visited.

### **Decision by an appointed person**

**17.** If the function of determining the appeal has been delegated to the appointed person, that person must give notice in writing of the decision, and the reasons for it, to all persons entitled to appear at a hearing of the appeal (whether or not a hearing took place) and any other person who made a request to be notified of the decision in accordance with regulation 7(2)(d)(ii).

### **Decision by the National Assembly**

**18.** If regulation 17 does not apply to the determination of an appeal, the person

appointed to consider the written representations or to conduct the local inquiry or hearing, as the case may be, must prepare a report in writing to the National Assembly, incorporating that person's conclusions and recommendations and the National Assembly must, having considered that report, give notice in writing of the decision, and the reasons for it, to all persons entitled to appear at a hearing of the appeal (whether or not a hearing took place) and any other person who made a request to be notified of the decision in accordance with regulation 7(2)(d)(ii).

#### **Further or different procedures**

**19.** The National Assembly may, if the circumstances relating to a particular appeal make it necessary, require any specified steps to be taken, either in addition to, or in substitution for, those prescribed by these Regulations and may extend the time prescribed by these Regulations, or otherwise required under these Regulations, for the taking of any step but must, before doing so, unless the effect is limited to an extension of time, consult the appellant and the Council and consider any representations which they may make as to the desirability of such a requirement.

#### **Powers of an appointed person**

**20.** The powers and duties of the National Assembly under these Regulations may be exercised by an appointed person and references in these Regulations to the National Assembly are to be construed accordingly.

#### **Use of electronic communication**

**21.** Any document required or authorised to be sent by one person to another under the provisions of these Regulations may, as an alternative to any other method, be sent by means of an electronic communication, provided the person who sends the document has reasonable grounds for believing that the document will come to the attention of the person to whom it is sent, in legible form, within a reasonable time.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998[5]

*John Marek*

The Deputy Presiding Officer of the Assembly

9th July 2002

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### **EXPLANATORY NOTE**

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

Part III of and Schedule 9 to the Countryside and Rights of Way Act 2000 ("the 2000 Act") substitutes new sections 28 to 28R in the Wildlife and Countryside Act 1981 ("the 1981 Act"). Part III of and Schedule 11 to the 2000 Act makes transitional provisions in relation to the 1981 Act.

These Regulations make procedural provision, in relation to Wales, for appeals to the National Assembly for Wales by the owners or occupiers of sites of special scientific interest under -

(a) section 28F(1) of the 1981 Act, against a refusal by the Countryside Council for Wales ("the Council"), to consent to certain operations on the land, against the conditions attached to such a consent, against the modification or withdrawal of such a consent, or against the failure of the Council to determine an application for consent within the period prescribed by the 1981 Act;

(b) section 28(L)(1) of the 1981 Act, against a management notice served by the Council;

(c) paragraph 11(1) of Schedule 11 to the 2000 Act, against a stop notice served by the Council in respect of operations on the land.

These Regulations also prescribe the time within which an appeal under section 28(L)(1) of the 1981 Act must be brought, namely that it must be received by the National Assembly within the period of 2 months beginning with the date of the management notice to which it relates unless a longer period has been agreed by the Council and the appellant.

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*Notes:*

[1] 1981 c.69; section 28 was replaced by sections 28 to 28R under section 75(1) of and Schedule 9, paragraph 1 to the Countryside and Rights of Way Act 2000 (c.37).[back](#)

[2] 2000 c.37.[back](#)

[3] The powers of the Secretary of State in so far as exercisable in relation to Wales have been transferred to the National Assembly for Wales: *see* Article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), as amended by section 99 of the Countryside and Rights of Way Act 2000.[back](#)

[4] 1984 c.12.[back](#)

[5] 1998 c.38.[back](#)

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[Cymraeg \(Welsh\)](#)

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