

Welsh Statutory Instrument 2002 No. 1794 (W.169)

The Countryside Access (Appeals Procedures) (Wales) Regulations 2002

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STATUTORY INSTRUMENTS

2002 No. 1794 (W.169)

COUNTRYSIDE, WALES

The Countryside Access (Appeals Procedures) (Wales) Regulations 2002

<i>Made</i>	<i>9th July 2002</i>
<i>Coming into force</i>	<i>1st August 2002</i>

ARRANGEMENT OF REGULATIONS

Part I

GENERAL

- [1. Citation, commencement and application](#)
- [2. Interpretation](#)

Part II

INITIAL STAGES OF APPEALS

- [3. Action by the National Assembly on receipt of an appeal form](#)
- [4. Response by a respondent to an appeal](#)

[5. Notifying the parties of the appeal procedure](#)

[6. Notice to the public](#)

Part III

APPEALS DETERMINED ON THE BASIS OF WRITTEN REPRESENTATIONS

[7. Application](#)

[8. Exchange of evidence](#)

[9. Decision on an appeal determined by an exchange of written representations](#)

Part IV

APPEALS DETERMINED FOLLOWING A HEARING

[10. Application](#)

[11. Exchange of evidence](#)

[12. Date and notification of a hearing](#)

[13. Rights of attendance at and participation in a hearing](#)

[14. Procedure at a hearing](#)

[15. Decision after a hearing](#)

[16. Notification of decision](#)

Part V

APPEALS DETERMINED FOLLOWING A PUBLIC LOCAL INQUIRY

[17. Application](#)

[18. Procedure where the National Assembly causes a pre-inquiry meeting to be held](#)

[19. Receipt of statements of case etc.](#)

[20. Further power of appointed person to hold pre-inquiry meetings](#)

[21. Inquiry timetable](#)

[22. Date and notification of an inquiry](#)

[23. Rights of attendance at and participation in an inquiry](#)

[24. Proofs of evidence](#)

[25. Statement of common ground](#)

[26. Procedure at an inquiry](#)

[27. Decision after an inquiry](#)

[28. Notification of decision](#)

Part VI

MISCELLANEOUS

[29. Withdrawal of an appeal](#)

[30. Change to the form of an appeal](#)

[31. Further or different procedures](#)

[32. Notification of appointment of an assessor](#)

[33. Site inspections](#)

[34. Joint hearings or inquiries](#)

[35. Use of electronic communication](#)

[36. Publication of decisions on appeals under section 6 of the Act](#)

The National Assembly for Wales ("the National Assembly"), in exercise of the powers

conferred upon it by sections 11, 32, 38(6) and 44 of the Countryside and Rights of Way Act 2000^[1], hereby makes the following Regulations:

Part I

GENERAL

Citation, commencement and application

1. - (1) These Regulations may be cited as the Countryside Access (Appeals Procedures) (Wales) Regulations 2002 and shall come into force on 1st August 2002.

(2) These Regulations apply to Wales.

Interpretation

2. - (1) In these Regulations, words or phrases shall have the meaning given to them by the Act and:

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

"appeal" ("*apêl*") means an appeal to the National Assembly under sections 6(1), 30(3) or 38(3) of the Act;

"appeal form" ("*ffurflen apêl*") means the document through which an appeal is brought;

"appellant" ("*apelydd*") means a person who brings an appeal and, where two or more persons join in bringing an appeal, refers to all those persons jointly;

"appointed person" ("*person penodedig*") means a person appointed by the National Assembly under section 8 of the Act;

"assessor" ("*asesydd*") means a person appointed by the National Assembly under paragraph 4(3) of Schedule 3 to the Act;

"conclusive map" ("*map terfynol*") means a map issued by the Council in conclusive form under section 9 of the Act;

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

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

"inquiry" ("*ymchwiliad*") means a public local inquiry;

references to an "interest" ("*buddiant*") in land are to be interpreted in accordance with section 45(1) of the Act;

"interested person" ("*personau â diddordeb*") means a person (other than an appellant or a respondent) who has made representations to the National Assembly in relation to an appeal, unless it appears to the National Assembly that the representation in question was made frivolously or vexatiously;

"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;

"open country" ("*tir agored*") has the meaning given by section 1(2) of the Act;

"outline statement" ("*datganiad amlinellol*") means a statement outlining the case which a person wishes to put forward in relation to an appeal;

"person" ("*person*") and "persons" ("*personau*") include individuals, corporations and unincorporated bodies;

"persons entitled to take part" ("*personau â hawl i gymryd rhan*") means those persons specified as such in regulations 13 and 23, as appropriate;

"pre-inquiry meeting" ("*cyfarfod cyn-ymchwiliad*") means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously and, where two or more such meetings are held, reference to the conclusion of a pre-inquiry meeting is a reference to the conclusion of the final meeting;

"provisional map" ("*map dros dro*") means a map issued by the Council in provisional form under section 5(d) or 5(e) of the Act;

"the Provisional Maps Regulations" ("*Rheoliadau Mapiau Dros Dro*") means the Countryside Access (Provisional and Conclusive Maps) (Wales) Regulations 2002^[2];

"registered common land" ("*tir comin cofrestredig*") has the meaning given by section 1(3) of the Act;

"relevant time limits" ("*terfynau amser perthnasol*") means the time limits set by these Regulations or, where the National Assembly has exercised its power under regulation 31 to extend the time prescribed by these Regulation, those limits as so extended;

"the respondent" ("*yr atebydd*") means the person whose decision is the subject of the appeal;

"section 4(2) land" ("*tir adran 4(2)*") means the registered common land and open country in respect of which the Council is required to prepare maps in accordance with section 4(2) of the Act;

"starting date" ("*dyddiad cychwyn*") has the meaning given in regulation 5(4); and

"statement of case" ("*datganiad o achos*") means a written statement containing full particulars of the case which a person proposes to put forward in relation to an appeal, a list of documents which that party intends to rely on and any documents and/or maps which the National Assembly considers it necessary to request that person to provide.

(2) In these Regulations, unless otherwise specified, any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

(3) In reckoning any period which is expressed in these Regulations to be a period from a given date, that date is to be excluded and, where the day or the last day on which anything is required by, or in pursuance with, these Regulations to be done is a Sunday, Christmas Day, Good Friday, bank holiday or a day appointed for public thanksgiving or mourning, the requirement shall be deemed to relate to the first day thereafter which is not one of the days before-mentioned.

Part II

INITIAL STAGES OF APPEALS

Action by the National Assembly on receipt of an appeal form

3. The National Assembly must, as soon as reasonably practicable after it receives a completed appeal form, send a copy of it to the respondent.

Response by a respondent to an appeal

4. - (1) The respondent must, within 14 days of receiving from the National Assembly a copy of an appeal form, send to the National Assembly and to the appellant:

- (a) a statement containing an indication as to whether it will oppose the appeal and, if so, its grounds for doing so;
- (b) copies of any relevant correspondence between the appellant and the respondent;
- (c) in the case of an appeal under section 6 of the Act, a copy of an extract showing that part of the provisional map to which it relates;
- (d) copies of any representations made to the respondent by any person other than the appellant in respect of the decision on the part of the respondent to which the appeal relates; and
- (e) any further information required by the National Assembly to be provided.

(2) Where the respondent has complied with the requirements of paragraph (1), the respondent must, before the expiry of the relevant period specified in regulation 5(2), send to the National Assembly and to the appellant:

- (a) a statement confirming whether they will oppose the appeal;
- (b) a statement as to whether they wish to be heard by a person appointed by the National Assembly in connection with the appeal (rather than the appeal be determined on the basis of written representations) and, if so, whether they wish to be heard at a local inquiry or, alternatively, at a hearing; and
- (c) any further information required by the National Assembly to be provided.

Notifying the parties of the appeal procedure

5. - (1) The National Assembly must, no earlier than the end of the period specified in paragraph (2), give notice to the appellant and to the respondent of the form which the appeal is to take.

(2) Notice under paragraph (1) must not be given before:

- (a) the expiry of 21 days from the date specified in the notice or notices given or published under regulation 6(1)(a) or (b) as being the date by which representations to the National Assembly could be made; or

(b) in the case of an appeal under section 6 of the Act, the expiry of three months from the date of issue of the provisional map to which the appeal relates,

whichever is the later.

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

(a) a local inquiry;

(b) a hearing; or

(c) neither (a) nor (b), and will therefore be determined on the basis of written representations.

(4) The date of the notice given under paragraph (1) is the "starting date" for the purposes of these Regulations in relation to the appeal to which it refers and the notice must contain a statement to that effect.

(5) If the appeal is to take the form of a local inquiry, and the National Assembly intends to hold a pre-inquiry meeting, the notice given under paragraph (1) must also comply with the requirements of regulation 18(2)(a).

Notice to the public

6. - (1) The National Assembly must, at the same time as it gives notice to the appellant and to the respondent under regulation 5(1), or as soon as practicable thereafter:

(a) publish notice of the appeal in at least one daily newspaper circulating throughout that part of Wales which includes the land to which the appeal relates and in such other newspapers or publications circulating in that part of Wales as the National Assembly thinks fit; and

(b) where practicable, publish notice of the appeal on a web-site maintained by or on behalf of the National Assembly; and

(c) in the case of an appeal under section 6 of the Act, send notice of the appeal to the organisations listed in Schedule 1 to the Provisional Maps Regulations.

(2) A notice published under paragraph (1)(a) or (b) or sent under paragraph (1)(c) must be dated and must state:

(a) the name of the appellant;

(b) sufficient information to identify the land in respect of which the appeal has been brought;

(c) if the appeal is brought under section 6 of the Act, on which of the grounds specified in section 6(3) it has been brought;

(d) the reference number allocated to the appeal;

(e) the starting date;

(f) the means by which members of the public may inspect, and take a copy of, documents relating to the appeal;

(g) that representations, which may be made either in the English language or the Welsh language, relating to the appeal may be made in writing or in electronic form to the National Assembly by such date as is specified in the notice, which must not be earlier than 6 weeks after the date on which the notice is published in accordance with paragraph (1)(a) or (b), and that copies of such representations will be provided to the appellant and to the respondent;

(h) the address to which written communications to the National Assembly are to be sent;

(i) whether the appeal is to take the form of a local inquiry or a hearing or is to be determined on the basis of written representations;

(j) if the appeal is to take the form of a local inquiry, that a person who makes representations in accordance with paragraph (2)(g) will be notified of the date and place of the inquiry and may attend, but will only be permitted to take part in, the inquiry with the permission of the person appointed to conduct it; and

(k) if the appeal is to take the form of a hearing, that a person who makes representations in accordance with paragraph (2)(g) will be notified of the date and place of the hearing but will only be permitted to attend and take part in the hearing with the permission of the person appointed to conduct it.

(3) If the appeal is to take the form of a local inquiry, and the National Assembly intends to hold a pre-inquiry meeting, the notice published under paragraph (1)(a) or (b) or sent under paragraph (1)(c) must also comply with the requirements of regulation 18(2)(b).

(4) Any notice published or sent in accordance with paragraph (1)(a), (b) or (c) may, in addition to such information as is required to be included in such a notice by this regulation, include such further information as the National Assembly shall think fit.

Part III

APPEALS DETERMINED ON THE BASIS OF WRITTEN REPRESENTATIONS

Application

7. Regulations 8 and 9 apply to appeals which are to be determined on the basis of written representations.

Exchange of evidence

8. - (1) In addition to any documents already sent to the National Assembly by the appellant in accordance with regulation 6 of the Provisional Maps Regulations (in the case of an appeal under section 6 of the Act), and by the respondent in accordance with regulation 4 of these Regulations, the appellant and the respondent must, within 6 weeks of the starting date, send to the National Assembly two copies of any further written representations or other documents on which they wish to rely or, if they do not wish to rely on any such further representations or other documents, a notice to that effect.

(2) The National Assembly must, as soon as practicable after receiving any further representations, other documents or notices pursuant to paragraph (1), send a copy of those

representations, documents or notices to the appellant or the respondent, as appropriate.

(3) The appellant and the respondent must, within 9 weeks of the starting date, send to the National Assembly two copies of any further representations, other documents or notices on which they wish to rely or, if they do not wish to rely on any such further representations or other documents, a notice to that effect.

(4) Where representations have been made to the National Assembly by anyone other than the appellant and the respondent, the National Assembly must, as soon as practicable after receiving those representations, send a copy of them to the appellant, and to the respondent, who must, if they wish to submit any comments on those representations to the National Assembly, send two copies of their comments to the National Assembly within 9 weeks of the starting date.

(5) The National Assembly may, in a particular case, invite the appellant and the respondent to send to the National Assembly and to each other, 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 determined.

Decision on an appeal determined by an exchange of written representations

9. - (1) The appointed person may, after the expiration of any time limits within which the appellant or the respondent are required or permitted to take any step in accordance with these Regulations, and after giving to the appellant and the respondent written notice of the intention to do so, proceed to a decision on the appeal by taking into account only such representations and other documents as have been submitted to the National Assembly within the relevant time limits.

(2) The National Assembly must notify the decision on an appeal, and its reasons for reaching that decision, in writing to:

- (a) the appellant;
- (b) the respondent;
- (c) any interested person; and
- (d) any other person who has asked to be notified of the decision whom the National Assembly considers it reasonable to notify.

Part IV

APPEALS DETERMINED FOLLOWING A HEARING

Application

10. Regulations 11 to 16 apply to appeals which are to be determined following a hearing.

Exchange of evidence

11. Regulation 8 is to apply to an appeal to be determined following a hearing as it does to an appeal to be determined on the basis of written representations.

Date and notification of a hearing

12. - (1) The National Assembly must:

(a) as soon as practicable, notify the appellant, the respondent, any person who has made representations in relation to the appeal and any other person as it thinks fit, of the name of the appointed person who will conduct the hearing;

(b) as soon as practicable after any change in the identity of the appointed person, give notification of that change to those persons entitled to be notified in accordance with sub-paragraph (a), unless it is not reasonably practicable to do so before the hearing is held, in which case the name of the appointed person and the fact of that person's appointment must be announced at the commencement of the hearing;

(c) unless the National Assembly agrees a lesser period of notice with the appellant and the respondent, give not less than 4 weeks' written notice to the appellant, the respondent, any interested person and such other persons as it thinks fit of the date, time and place fixed for the hearing; and

(d) not less than 2 weeks before the date fixed for the holding of a hearing, publish a notice of the hearing in one or more newspapers circulating in the locality in which the land is situated.

(2) Every notice of a hearing given in accordance with paragraph (1)(c) or published in accordance with paragraph (1)(d) must contain:

(a) a statement of the date, time and place of the hearing and of the powers enabling the National Assembly to determine the appeal in question;

(b) a written description of the land sufficient to identify its location and extent;

(c) a brief description of the subject matter of the appeal; and

(d) details of where and when copies of documents relevant to the appeal may be inspected.

(3) Notwithstanding paragraph (1), the National Assembly may vary the date fixed for the holding of the hearing, whether or not the date as varied is within the period otherwise required by that paragraph and paragraph (1)(c) and (d) apply to a variation of a date as they applied to the date originally fixed.

(4) The National Assembly may vary the time or place fixed for the holding of the hearing and must give such notice of any variation as appears to it to be reasonable.

Rights of attendance at and participation in a hearing

13. The appellant and the respondent are entitled to attend and take part in a hearing, and the appointed person may permit any other persons to do so (whether on their own behalf or on behalf of any other person).

Procedure at a hearing

14. - (1) Except as otherwise provided in these Regulations, the appointed person may determine the procedure at a hearing.

(2) A hearing is to take the form of a discussion led by the appointed person and cross-examination is not to be permitted unless the appointed person considers that it is required to ensure proper examination of the issues relevant to the appeal.

(3) An appointed person who considers that cross-examination is required under paragraph (2) must consider, after consulting the appellant and the respondent, whether the hearing should be closed and an inquiry held instead.

(4) At the start of the hearing, the appointed person must identify the issues which appear to the appointed person to be the main issues to be considered at the hearing and any matters on which the appointed person requires further explanation from any person entitled or permitted to take part.

(5) Nothing in paragraph (4) is to preclude any person entitled or permitted to take part in the hearing from referring to issues which they consider relevant to the consideration of the appeal but which were not issues identified by the appointed person pursuant to that paragraph.

(6) A person entitled to take part in a hearing may, subject to the foregoing and paragraphs (7) and (8), call evidence but, the calling of evidence is otherwise to be at the appointed person's discretion.

(7) The appointed person may refuse to permit the giving of oral evidence or the presentation of any other matter which the appointed person considers to be irrelevant or repetitious but, where the appointed person refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit any evidence or other matter in writing to the appointed person before the close of the hearing.

(8) The appointed person may:

(a) require any person attending or taking part in a hearing who, in the opinion of the appointed person, is behaving in a disruptive manner to leave; and

(b) refuse to permit that person to return or permit that person to return only on such conditions as the appointed person may specify,

but any such person may submit any evidence or other matter in writing to the appointed person before the close of the hearing.

(9) The appointed person may allow any person to alter or add to a statement so far as may be necessary for the purposes of the hearing, but the appointed person must (if necessary by adjourning the hearing) give every other person entitled to take part in and who is actually taking part in the hearing an adequate opportunity of considering any fresh matter or document.

(10) The appointed person may proceed with a hearing in the absence of any person entitled to take part in it.

(11) The appointed person may take into account any written representation or evidence or any other document which the appointed person has received from any person before a hearing opens or during the hearing provided that the appointed person discloses it at the hearing.

(12) The appointed person may from time to time adjourn a hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice is to be required.

Decision after a hearing

15. - (1) The appointed person may disregard any written representations, evidence or other documents received after the hearing has closed.

(2) 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 government policy) which was not raised at the hearing and which the appointed person considers to be material to the decision, the appointed person must not do so without first:

- (a) notifying persons entitled to take part in the hearing (whether or not they attended the hearing) of the matter in question; and
- (b) affording them an opportunity of making written representations or of asking for the re-opening of the hearing,

provided such written representations or request to re-open the hearing are received by the National Assembly within 3 weeks of the date of the notification.

(3) An appointed person may cause a hearing to be re-opened and the appointed person must do so if asked by the appellant or the respondent in the circumstances and within the period mentioned in paragraph (2) and where a hearing is re-opened:

- (a) the appointed person must send to the persons entitled to take part in the hearing and who took part in it a written statement of the matters with respect to which further evidence is invited; and
- (b) regulation 12(1)(c) and (d) are to apply as if the references to a hearing were references to a re-opened hearing.

Notification of decision

16. - (1) The decision of the appointed person, and the reasons for it, must be notified in writing to:

- (a) the appellant;
- (b) the respondent;
- (c) any other person who, having taken part in the hearing, has asked to be notified of the decision.

(2) Any person entitled to be notified of the decision under paragraph (1) may apply to the National Assembly, in writing, for an opportunity to inspect any documents listed in the notification and the National Assembly must afford that person that opportunity.

(3) Any person making an application under paragraph (2) must ensure that it is received by the National Assembly within 6 weeks of the date of the decision on the appeal.

Part V

APPEALS DETERMINED FOLLOWING A PUBLIC LOCAL INQUIRY

Application

17. Regulations 18 to 28 apply to appeals which are to be determined following a public local inquiry.

Procedure where the National Assembly causes a pre-inquiry meeting to be held

18. - (1) The National Assembly must hold a pre-inquiry meeting:

(a) if it expects an inquiry to last for 8 days or more, unless it considers such a meeting to be unnecessary;

(b) in respect of shorter inquiries, if it appears to it to be necessary.

(2) Where the National Assembly decides to hold a pre-inquiry meeting:

(a) the National Assembly must send with or include in the notice it gives in accordance with regulation 5(1):

(i) notice of its intention to hold a pre-inquiry meeting; and

(ii) a statement of the matters about which it particularly wishes to be informed for the purposes of its consideration of the appeal in question;

(b) the National Assembly must include in the notice it publishes in accordance with regulation 6(1)(a) or (b) or sends in accordance with regulation 6(1)(c), notice of its intention to hold a pre-inquiry meeting and a statement of the matters referred to in paragraph (2)(a)(ii); and

(c) the appellant and the respondent must each send two copies of their outline statement to the National Assembly within 8 weeks of the starting date.

(3) The National Assembly must, as soon as practicable after receipt, send a copy of the outline statement of the respondent to the appellant and that of the appellant to the respondent.

(4) The National Assembly may, in writing, require any interested persons who have notified it of an intention or a wish to take part in the inquiry to send an outline statement to it, to the appellant and to the respondent, and those interested persons must ensure that such statement is received by the National Assembly, the appellant and the respondent within 4 weeks of the date of the National Assembly's written requirement.

(5) The pre-inquiry meeting (or, where there is more than one, the first pre-inquiry meeting) must be held within 16 weeks of the starting date.

(6) The National Assembly must give not less than 3 weeks' written notice of the pre-inquiry meeting to the appellant, the respondent, any interested person known at the date of the notice to wish to take part in the inquiry and any other person whose presence at the pre-inquiry meeting appears to the National Assembly to be desirable, and it must, in relation to notification of the pre-inquiry meeting, take one or more of the steps specified, in relation to the inquiry, in regulation 22(6).

(7) The appointed person:

(a) is to preside at the pre-inquiry meeting;

- (b) is to determine the matters to be discussed and the procedure to be followed;
- (c) may require any person present at the pre-inquiry meeting who, in the opinion of the appointed person, is behaving in a disruptive manner to leave; and
- (d) may refuse to permit that person to return or to attend any further pre-inquiry meeting, or may permit that person to return or attend only on such conditions as the appointed person may specify.

(8) Where a pre-inquiry meeting has been held pursuant to paragraph (1), the appointed person may hold a further pre-inquiry meeting and must arrange for such notice to be given of a further pre-inquiry meeting as appears to the appointed person to be necessary; and paragraph (7) is to apply to such a further pre-inquiry meeting.

(9) If the National Assembly requests any further information from the appellant or the respondent at the pre-inquiry meeting, the person from whom the further information has been requested must ensure that two copies of that information have been received by the National Assembly and a copy has been received by any interested person to whom the appointed person may require a copy to be supplied, within 4 weeks of the conclusion of the pre-inquiry meeting and the National Assembly must, as soon as practicable after receipt, send a copy of the further information received from the appellant to the respondent and a copy of the further information received from the respondent to the appellant.

Receipt of statements of case etc.

19. - (1) The respondent must ensure that within:

- (a) 6 weeks of the starting date; or
- (b) where a pre-inquiry meeting is held pursuant to regulation 18, 4 weeks of the conclusion of that pre-inquiry meeting,

two copies of the respondent's statement of case have been received by the National Assembly and a copy of that statement of case has been received by any interested person to whom the National Assembly may require a copy of that statement of case to be supplied.

(2) The respondent must include, in its statement of case, details of the place where, and times at which, the opportunity to inspect and take copies of the documents referred to in paragraph (12) below is to be afforded.

(3) The appellant must ensure that within:

- (a) 6 weeks of the starting date; or
- (b) where a pre-inquiry meeting is held pursuant to regulation 18, 4 weeks of the conclusion of that pre-inquiry meeting,

two copies of the appellant's statement of case have been received by the National Assembly and a copy of that statement of case has been received by any interested person to whom the National Assembly may require a copy of that statement of case to be supplied.

(4) The National Assembly must, as soon as practicable after receipt, send a copy of the respondent's statement of case to the appellant and a copy of the appellant's statement of

case to the respondent.

(5) The appellant and the respondent may, in writing, each require the other to send them a copy of any document, or the relevant part of any document, referred to in the list of documents comprised in the other's statement of case; and any such document, or relevant part, must be sent, as soon as practicable, to the party who required it.

(6) The National Assembly may, in writing, require any other person, who has notified it of a wish to seek the appointed person's permission to take part in the inquiry, to send:

(a) three copies of their statement of case to it within 4 weeks of being so required; and

(b) a copy of their statement of case to any specified interested person,

and the National Assembly must, as soon as practicable after receipt, send a copy of each such statement of case to the appellant and the respondent.

(7) The National Assembly must, as soon as practicable;

(a) send to a person from whom it requires a statement of case in accordance with paragraph (6) a copy of the statements of case of the appellant and the respondent; and

(b) inform that person of the name and address of every person to whom that person's statement of case is required to be sent.

(8) The National Assembly may in writing require any person, who has sent to it a statement of case in accordance with this regulation, to provide such further information about the matters contained in the statement of case as it may specify and may specify the time within which the information shall be received by it.

(9) Where the respondent or appellant is required to provide further information, they shall ensure that:

(a) two copies of that information in writing have been received by the National Assembly, within such time as is specified; and

(b) a copy has been received by any interested person to whom the National Assembly may require it to be supplied within such time as is specified,

and the National Assembly must, as soon as practicable after receipt, send to the appellant a copy of the further information received from the respondent and send to the respondent a copy of the further information received from the appellant.

(10) Any other person required to provide further information must ensure that:

(a) three copies of that information in writing have been received by the National Assembly, within the specified time; and

(b) a copy has been received by any interested person to whom the National

Assembly may require it to be supplied within the specified time,

and the National Assembly must, as soon as practicable after receipt, send a copy of the further information to the respondent and the appellant.

(11) Any person other than the appellant who sends a statement of case to the National Assembly must send with it a copy of:

- (a) any document; or
- (b) the relevant part of any document,

referred to in the list comprised in that statement, unless a copy of the document or part of the document in question is already available for inspection pursuant to paragraph (12).

(12) The respondent must afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of:

- (a) any statement of case, written comments, information or other document a copy of which has been sent to the respondent in accordance with this regulation; and
- (b) the respondent's statement of case together with a copy of any document, or the relevant part of any document, referred to in the list comprised in that statement, and any written comments, information or other documents sent by the respondent pursuant to this regulation.

(13) If the respondent or the appellant wish to comment on the other's statement of case they must ensure that within 9 weeks of the starting date:

- (a) two copies of their written comments have been received by the National Assembly; and
- (b) a copy of their written comments has been received by any interested person to whom the National Assembly may require them to be supplied,

and the National Assembly must, as soon as practicable after receipt, send a copy of the written comments received from the appellant to the respondent and a copy of the written comments received from the respondent to the appellant.

(14) Any person, who sends a statement of case to the National Assembly under this regulation and who wishes to comment on another person's statement of case, must ensure that not less than 4 weeks before the date fixed for the holding of the inquiry:

- (a) three copies of that person's written comments have been received by the National Assembly; and
- (b) a copy of those written comments has been received by any interested person to whom the National Assembly may require them to be supplied,

and the National Assembly must, as soon as practicable after receipt, send a copy of the written comments to the appellant and the respondent.

(15) The National Assembly must, as soon as practicable after receipt, send to the appointed person any statement of case, document or further information or written comments sent to it in accordance with this regulation and received by it within the relevant period, if any, specified in this regulation.

Further power of appointed person to hold pre-inquiry meetings

20. - (1) Where no pre-inquiry meeting is held pursuant to regulation 18, an appointed person may hold one if the appointed person thinks it necessary.

(2) An appointed person must give not less than 2 weeks' written notice of a pre-inquiry meeting to be held under paragraph (1) to:

- (a) the appellant;
- (b) the respondent;
- (c) any person known at the date of the notice to be entitled to take part in the inquiry; and
- (d) any other person whose presence at the pre-inquiry meeting appears to him to be desirable.

(3) Regulation 18(7) applies to a pre-inquiry meeting held under this regulation.

Inquiry timetable

21. - (1) The appointed person must arrange a timetable for the proceedings at, or at part of, an inquiry where:

- (a) a pre-inquiry meeting is held pursuant to regulation 18; or
- (b) it appears to the National Assembly likely that an inquiry will last for 8 days or more.

(2) The appointed person may arrange a timetable for the proceedings at, or at part of, any other inquiry and may, at any time, vary the timetable arranged under this, or the preceding, paragraph.

(3) The appointed person may specify in a timetable arranged pursuant to this regulation a date by which any proof of evidence and summary sent in accordance with regulation 24(1) must be received by the National Assembly.

Date and notification of inquiry

22. - (1) The date fixed by the National Assembly for the holding of an inquiry must, unless it considers such a date impracticable, be not later than -

- (a) 22 weeks after the starting date; or
- (b) in a case where a pre-inquiry meeting is held pursuant to regulation 18, 8 weeks after the conclusion of that meeting.

(2) Where the National Assembly considers it impracticable to fix a date in accordance with paragraph (1), the date fixed must be the earliest date after the end of the relevant period mentioned in that paragraph which it considers to be practicable.

(3) Unless the National Assembly agrees a lesser period of notice with the appellant and the respondent, it must give not less than 4 weeks' written notice of the date, time and place fixed by it for the holding of an inquiry to every person entitled to take part in the inquiry.

(4) The National Assembly may vary the date fixed for the holding of an inquiry, whether or not the date as varied is within the relevant period mentioned in paragraph (1); and paragraph (3) shall apply to a variation of a date as it applied to the date originally fixed.

(5) The National Assembly may vary the time or place for the holding of an inquiry and must give such notice of any variation as appears to it to be reasonable.

(6) The National Assembly must take one or more of the following steps:

(a) not less than 2 weeks before the date fixed for the holding of an inquiry, to publish a notice of the inquiry in one or more newspapers circulating in the locality in which the land is situated;

(b) to send a notice of the inquiry to such persons or classes of persons as it may specify, within such period as it may specify.

(7) Every notice of inquiry published or sent pursuant to paragraph (6), must:

(a) contain a clear statement of the date, time and place of the inquiry and of the powers enabling the National Assembly to determine the application or appeal in question;

(b) contain a written description of the land sufficient to enable the approximate location and extent of the land to be identified;

(c) briefly describe the subject matter of the appeal; and

(d) provide details of where and when copies of the respondent's statement of case and any documents sent by and copied to the respondent pursuant to regulation 19 may be inspected.

Rights of attendance at and participation in an inquiry

23. - (1) The persons entitled to take part in an inquiry are:

(a) the appellant;

(b) the respondent; and

(c) any officer of any local authority or National Park authority whose area includes land to which the appeal relates.

(2) The appointed person may permit any other person to take part in an inquiry.

(3) Any person entitled or permitted to take part in an inquiry may do so on his own behalf or be represented by any other person.

Proofs of evidence

24. - (1) Any person entitled to take part in an inquiry who proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence, must:

(a) send two copies, in the case of the respondent and the appellant, or three copies in the case of any other person, of the proof of evidence together with any written summary, to the National Assembly; and

(b) simultaneously send copies of these to any interested person to whom the National Assembly may require them to be supplied,

and the National Assembly must, as soon as practicable after receipt, send a copy of each proof of evidence together with any summary to the respondent and the appellant.

(2) No written summary is required where the proof of evidence proposed to be read contains no more than 1,500 words.

(3) The proof of evidence and any summary must be received by the National Assembly no later than:

(a) 4 weeks before the date fixed for the holding of the inquiry; or

(b) where a timetable has been arranged pursuant to regulation 21 which specifies a date by which the proof of evidence and any summary must be received by the National Assembly, that date.

(4) The National Assembly must send to the appointed person, as soon as practicable after receipt, any proof of evidence together with any summary sent to it in accordance with this regulation and received by it within the relevant period specified in this Regulation.

(5) Where a written summary is provided in accordance with paragraph (1), only that summary shall be read at the inquiry, unless the appointed person permits or requires otherwise.

(6) Any person required by this regulation to send copies of a proof of evidence to the National Assembly must send with them the same number of copies of the whole, or the relevant part, of any document referred to in the proof of evidence, unless a copy of the document or part of the document in question is already available for inspection pursuant to regulation 19(12).

(7) The respondent must afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any document sent to or by the respondent in accordance with this regulation.

Statement of common ground

25. - (1) The respondent and the appellant must:

(a) together prepare an agreed statement of common ground; and

(b) ensure that the National Assembly and any interested person to whom the

National Assembly may require a copy to be supplied receive a copy of it not less than 4 weeks before the date fixed for the holding of the inquiry.

(2) The respondent must afford to any person who so requests, a reasonable opportunity to inspect, and where practicable, take copies of the statement of common ground sent to the National Assembly.

Procedure at inquiry

26. - (1) Except as otherwise provided in these Regulations, the appointed person is to determine the procedure at an inquiry.

(2) At the start of the inquiry the appointed person must identify the issues which are, in the opinion of the appointed person, the main issues to be considered at the inquiry and any matters on which the appointed person requires further explanation from the persons entitled or permitted to take part.

(3) Nothing in paragraph (2) is to preclude any person entitled or permitted to take part from referring to issues which they consider relevant to the consideration of the application or appeal but which were not issues identified by the appointed person pursuant to that paragraph.

(4) Unless in any particular case the appointed person otherwise determines, the respondent is to begin and the appellant is to have the right of final reply; and the other persons entitled or permitted to take part are to be heard in such order as the appointed person may determine.

(5) A person entitled to take part in an inquiry is to be entitled to call evidence and the appellant, the respondent and any interested person is to be entitled to cross-examine persons giving evidence, but, subject to the foregoing and paragraphs (6) and (7), the calling of evidence and the cross-examination of persons giving evidence is otherwise to be at the discretion of the appointed person.

(6) The appointed person may refuse to permit the:

- (a) giving or production of evidence;
- (b) cross-examination of persons giving evidence; or
- (c) presentation of any other matter,

which the appointed person considers to be irrelevant or repetitious; but where the appointed person refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to the appointed person any evidence or other matter in writing before the close of the inquiry.

(7) Where a person gives evidence at an inquiry by reading a summary of a proof of evidence in accordance with regulation 24(5):

- (a) the proof of evidence referred to in regulation 24(1) must be treated as tendered in evidence, unless the person required to provide the summary wishes to rely on the contents of that summary alone and notifies the appointed person of that fact; and
- (b) the person whose evidence the proof of evidence contains is then to be subject to cross-examination on it to the same extent as if it were evidence that person had given

orally.

(8) The appointed person may direct that facilities are to be afforded to any person taking part in an inquiry to take or obtain copies of documentary evidence open to public inspection.

(9) The appointed person may:

(a) require any person taking part in or attending an inquiry who, in the opinion of the appointed person, is behaving in a disruptive manner to leave; and

(b) refuse to permit that person to return; or

(c) permit that person to return only on such conditions as the appointed person may specify,

but any such person may submit to the appointed person any evidence or other matter in writing before the close of the inquiry.

(10) The appointed person may allow any person to alter or add to a statement of case received by the National Assembly or by the appointed person under regulation 19 so far as may be necessary for the purposes of the inquiry, but the appointed person must (if necessary by adjourning the inquiry) give every other person entitled to take part and who is actually taking part in the inquiry an adequate opportunity of considering any fresh matter or document.

(11) The appointed person may proceed with an inquiry in the absence of any person entitled to take part in it.

(12) The appointed person may take into account any written representation or evidence or any other document received from any person before an inquiry opens or during the inquiry provided that the appointed person discloses it at the inquiry.

(13) The appointed person may from time to time adjourn an inquiry and, if the date, time and place of the adjourned inquiry are announced at the inquiry before the adjournment, no further notice is to be required.

(14) In respect of any inquiry that the National Assembly expects to last for 8 or more days, any person who takes part in the inquiry and makes closing submissions, must by the close of the inquiry provide the appointed person with a copy of those closing submissions in writing.

Decision after an inquiry

27. - (1) Where an assessor has been appointed, the assessor may make a report in writing to the appointed person in respect of the matters on which the assessor was appointed to advise.

(2) When making a decision in relation to the appeal, the appointed person may disregard any written representations, or evidence or any other document received after the inquiry has closed.

(3) If, after the close of the inquiry, an appointed person proposes to take into consideration any new evidence or any new matter of fact (not being a matter of government policy) which was not raised at the inquiry and which the appointed person considers to be material to the decision, the appointed person must not come to a decision

without first:

- (a) notifying persons entitled to take part in the inquiry who took part in it of the matter in question; and
- (b) affording them an opportunity of making written representations to the appointed person or of asking for the re-opening of the inquiry,

and they shall ensure that such written representations or request to re-open the inquiry are received by the appointed person within 3 weeks of the date of the notification.

(4) An appointed person may cause an inquiry to be re-opened and must do so if asked by the appellant or the respondent in the circumstances and within the period mentioned in paragraph (3); and where an inquiry is re-opened:

- (a) the appointed person must send to the persons entitled to take part in the inquiry and who actually took part in it a written statement of the matters with respect to which further evidence is invited; and
- (b) regulation 22(3) to (7) applies as if the references to an inquiry were references to a re-opened inquiry.

Notification of decision

28. - (1) The decision of the appointed person and the reasons for it, must be notified in writing to:

- (a) the appellant;
- (b) the respondent;
- (c) any other persons entitled to take part in the inquiry who did take part; and
- (d) any other person who, having taken part in the inquiry, has asked to be notified of the decision.

(2) Any person entitled to be notified of the decision under paragraph (1) may apply to the National Assembly, in writing, for an opportunity to inspect any documents listed in the notification and the National Assembly must afford that person that opportunity.

(3) Any person making an application under paragraph (2) must ensure that it is received by the National Assembly within 6 weeks of the date of the decision.

Part VI

MISCELLANEOUS

Withdrawal of an appeal

29. - (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 5(1).

Change to the form of an appeal

30. 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 5, it may 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.

Further or different procedures

31. 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 respondent and may consult any interested person and must consider the representations made by any person consulted as to the desirability of such a requirement.

Notification of appointment of an assessor

32. Where the National Assembly exercises its power under paragraph 4(3) of Schedule 3 to the Act to appoint an assessor to assist an appointed person in the determination of an appeal, it must notify the appellant, the respondent and any interested person of the name of the assessor and the matters on which the assessor has been appointed to advise the appointed person.

Site inspections

33. - (1) The appointed person may at any time make an unaccompanied inspection of the land without giving notice of an intention to do so to the appellant or the respondent.

(2) During an inquiry or hearing or after the close of an inquiry or hearing, the appointed person:

(a) may, after announcing during the inquiry or hearing the date and time at which the inspection is proposed to be made, inspect the land in the company of the appellant, the respondent and any interested person; and

(b) must make such an inspection if so requested by the appellant or the respondent before or during an inquiry or hearing.

(3) If an appeal is being determined on the basis of written representations, the appointed person:

(a) may, after giving the appellant and the respondent reasonable notice in writing of an intention to do so, inspect the land in the company of the appellant, the respondent and any interested person; and

(b) must make such an inspection if so requested by the appellant or the respondent before the appointed person makes a decision.

(4) 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 inspected.

(5) The appointed person is not to be bound to defer an inspection of the kind referred to in paragraphs (2) or (3) where any person mentioned in those paragraphs is not present at the time appointed.

Joint hearings or inquiries

34. Where two or more appeals give rise to a common issue or issues or, in the case of appeals under section 6 of the Act, relate to the same provisional map, the National Assembly may hold a joint hearing or inquiry relating to those appeals if in its opinion it is desirable to do so and, in such a case, the National Assembly must exercise its powers under regulation 31 with a view to modifying the provisions of these Regulations to such extent as is necessary in consequence of the decision to hold a joint hearing or inquiry.

Use of electronic communication

35. - (1) 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.

(2) Where, under these Regulations, there is a requirement that a copy of a statement, representation, notice or other document should be sent to the National Assembly then, if that copy is sent in electronic form, any further requirement that more than one copy should be sent is to be disregarded.

Publication of decisions on appeals under section 6 of the Act

36. The National Assembly must, unless it is not reasonably practicable to do so, publish on an internet web-site which it maintains notice of every decision made under these Regulations in relation to an appeal under section 6 of the Act and continue to do so until the conclusive map to which the appeal relates is issued.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998[3].

John Marek
The Deputy Presiding Officer of the National Assembly

9th July 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under sections 11, 32 and 38 of the Countryside and Rights of Way Act 2000 ("the Act"), the National Assembly for Wales ("the National Assembly") has the power to make regulations to provide the procedures to be followed in determining appeals brought under Part I of the Act.

These Regulations will initially have effect in relation to appeals brought under section 6 of

the Act (appeals by persons against the showing of land, in which they have an interest, on a provisional map as open country or registered common land).

It is intended that these Regulations will also form the basis of the procedures to be used in determining other appeals brought under Part I of the Act, including those under section 30 of the Act (an appeal against a decision of an authority where that authority has decided not to grant an application for a direction under section 24 or 25 of the Act or has acted otherwise than in accordance with representations made under section 27(5) of the Act) and those under section 38 of the Act (an appeal by a person to whom a notice has been given by an authority under section 36(3) or 37(1) of the Act, or an appeal by any other owner or occupier of the land affected by such notice, against the giving of such notice).

In these Regulations:

Part II (regulations 3 to 6) sets out the initial procedures which will have effect irrespective of whether the appeal is to be determined by exchange of written representations or following a hearing or public local inquiry. These initial procedures require the person bringing the appeal ("the appellant"), and the person whose decision has given rise to the appeal ("the respondent"), to provide specified information to the National Assembly and require the publication of notices in the local press, and the sending of notices to persons and specified organisations who have an interest in such appeals, giving information relating to the appeal.

Part III (regulations 7 to 9) provides the procedures to be followed where a party to an appeal has chosen to have the appeal determined through an exchange of written representations. The main parties to the appeal are required to exchange evidence before the person appointed by the National Assembly to determine the appeal will make the decision and notify the persons specified in regulation 9 of that decision.

Part IV (regulations 10 to 16) provides the procedures to be followed where a party to an appeal has chosen for the appeal to be determined following a hearing. The main parties to the appeal will be required to exchange evidence in the same way as is required by Part III of the Regulations and a person will then be appointed by the National Assembly to determine the appeal by conducting a hearing. The Regulations provide for the main parties to the appeal, and the public, to be notified of the date, time and place fixed for the hearing and specify the persons entitled to attend, and take part, and the procedure to be followed at a hearing. After the hearing has been brought to a close, the person appointed by the National Assembly to determine the appeal will make the decision and notify the persons specified in regulation 16 of that decision.

Part V (regulations 17 to 28) provides the procedures to be followed where a party to an appeal has chosen for the appeal to be determined following a public local inquiry. Where an inquiry is to be held, the Regulations provide for a pre-inquiry meeting to be held if the main inquiry is either expected to last for 8 days or more or a pre-inquiry meeting is nevertheless considered necessary. The main parties to the appeal are required to exchange statements of case and other interested persons may also submit representations to the National Assembly. The Regulations require the person appointed by the National Assembly to hold the inquiry to arrange a timetable for the inquiry and require notice of the date, time and place of the inquiry to be publicised. The Regulations specify the persons entitled to attend, and take part, at an inquiry and set out other procedural issues relating to the conduct of an inquiry. After the inquiry has been brought to a close, the person appointed to determine the appeal will make the decision and notify the persons specified in regulation 28 of that decision.

Part VI (regulations 29 to 36) sets out miscellaneous matters, including the right for the appellant to withdraw an appeal, powers for the National Assembly to change the way an appeal may be conducted, to appoint a person ("an assessor") to assist the person appointed

to determine an appeal and to hold a joint hearing or inquiry where there are issues common to more than one appeal brought under Part I of the Act, a power for the person appointed to determine an appeal to visit and inspect the land which is the subject of the appeal, a power for electronic means of communication to be used by the parties and a requirement for the National Assembly to publish decisions made on appeals brought under Part I of the Act on its website.

Notes:

[1] 2000 c.37. Section 45(1) defines "regulations" in Part 1 of the Act (as respects Wales) as regulations made by the National Assembly for Wales.[back](#)

[2] S.I. 2002/1796 (W.171)[back](#)

[3] 1998 c.38.[back](#)

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