

# Welsh Statutory Instrument 2003 No. 390 (W.52)

## **The Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003**

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### STATUTORY INSTRUMENTS

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## **2003 No. 390 (W.52)**

### **TOWN AND COUNTRY PLANNING, WALES**

#### **The Town and Country Planning (Referrals and Appeals) (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 power conferred on the

Secretary of State by sections 323 and 333 of the Town and Country Planning Act 1990[1] and sections 89(1), 91(1) and 93(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990[2] and now vested in the National Assembly for Wales[3], and of all other powers enabling it in that behalf, makes the following Regulations:

**Citation, commencement and application**

1. - (1) These Regulations may be cited as the Town and Country Planning (Referrals and Appeals) (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 -

"appeal" ("*apêl*") means, in relation to -

(a) section 77 of the Planning Act or section 12 or 19 of the Listed Buildings Act, the determination of an application which has been referred to the National Assembly, but does not include an application which is deemed to have been referred to the National Assembly by virtue of regulation 13(3) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990[4]; and

(b) section 78 or 208 of the Planning Act or section 20 of the Listed Buildings Act, an appeal made under that section;

"appellant" ("*apelydd*") means, in the case of -

(a) an application referred to the National Assembly under section 77 of the Planning Act or section 12 or 19 of the Listed Buildings Act, the person who made that application to the local planning authority;

(b) an appeal under section 78 of the Planning Act or section 20 of the Listed Buildings Act, the person whose application was refused, granted subject to conditions or not determined, by the local planning authority; and

(c) an appeal under section 208 of the Planning Act, the person on whom a notice has been served under section 207(1) of that Act;

"application" ("*cais*") means, in relation to -

(a) section 77 of the Planning Act or section 12 or 19 of the Listed Buildings Act, the application which has been referred to the National Assembly;

(b) section 78 of the Planning Act or section 20 of the Listed Buildings Act, the application which is the subject of the appeal; and

(c) section 208 of the Planning Act, the notice served by the local planning authority under section 207(1) of that Act;

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

"electronic communication" has the meaning assigned to that term by section 15(1) of the Electronic Communications Act 2000<sup>[5]</sup>;

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

"local planning authority" ("*awdurdod cynllunio lleol*") means, in relation to -

(a) an application under section 77 of the Planning Act or section 12 or 19 of the Listed Buildings Act, the body which would have dealt with the application had it not been referred to the National Assembly;

(b) an appeal under section 78 of the Planning Act or section 20 of the Listed Buildings Act, the body which was responsible for determining the application occasioning the appeal; and

(c) an appeal under section 208 of the Planning Act, the body which served the notice under section 207(1) of that Act;

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

"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 a local planning authority for the purpose of proceedings under these Regulations;

references to section 12, 19 or 20 of the Listed Buildings Act includes reference to those sections as applied by section 74(3) of that Act;

references to section 78 of the Planning Act includes reference to that section as applied to applications for tree preservation orders made under that Act;

"relevant notice" ("*hysbysiad perthnasol*") means, in relation to an -

(a) application referred to the National Assembly under section 77 of the Planning Act or section 12 or 19 of the Listed Buildings Act, a written request by the appellant that the matter be disposed of by means of written representations; and

(b) appeal brought under section 78 or 208 of the Planning Act or section 20 of the Listed Buildings Act, a written notice served by the appellant,

notifying the National Assembly of their wish that the appeal be disposed of on the basis of written representations;

"starting date" ("*dyddiad dechrau*") means the date of the -

(a) National Assembly's written notice to the appellant and the local planning authority that all the documents required to enable it to entertain the appeal have been received; or

(b) written notice under regulation 4 below,

whichever is later; and

"written representations" ("*sylwadau ysgrifenedig*") includes supporting documents.

### **Application of the Regulations**

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

(2) Where an appeal 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 appeal to such extent as the National Assembly may specify having regard to any steps already taken in relation to the appeal.

(3) These Regulations cease to apply to appeals if the National Assembly informs the appellant and the local planning authority that it will afford to them an opportunity of attending and taking part in a hearing or a local inquiry held by a person appointed by it for the purpose.

### **Notification of receipt of application**

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

(a) the starting date;

(b) the reference number allocated to the appeal; and

(c) the address to which written communications to the National Assembly about the appeal are to be sent.

### **Notice to interested persons**

**5.** - (1) The local planning authority must give written notice of the appeal, so as to be received within 2 weeks of the starting date, to -

(a) any person notified or consulted in accordance with the Planning Act, the Listed Buildings Act or a development order, as the case may be, about an appeal; and

(b) any other person who made representations to the local planning authority about an appeal.

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

(a) state the name of the appellant and the address of the site to which the appeal relates;

- (b) describe the appeal;
- (c) set out the matters notified to the appellant and local planning authority under regulation 4;
- (d) state that copies of any representations made by any person mentioned in paragraph (1) will be sent to the National Assembly and the appellant;
- (e) state 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; and
- (f) state that further written representations may be sent to the National Assembly so as to be received within 6 weeks of the starting date.

### **Questionnaire**

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

- (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 relevant notice, and the documents accompanying it, will be deemed to comprise the appellant's representations in relation to the appeal.

(2) The local planning authority may elect to treat the questionnaire, and the documents sent with it, as its representations in relation to the appeal and, where it does so, it must notify the National Assembly and the appellant accordingly when it sends to the National Assembly, and copies to the appellant, the questionnaire in accordance with regulation 6.

(3) Where the local planning authority does not elect as described in paragraph (2), it must ensure that 2 copies of those further written representations are received by the National Assembly within 6 weeks of the starting date.

(4) An appellant who wishes to make any further representations to those in paragraph (1) must send 2 copies of those further representations to the National Assembly so as to be received within 6 weeks of the starting date.

(5) Any representations made to the National Assembly under paragraphs (3) and (4) must be dated with the date on which they are sent to the National Assembly.

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

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

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

### **Third party representations**

8. - (1) A person who has been notified under regulation 5(1), and who wishes to send representations to the National Assembly, may do so provided they are received by the National Assembly 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 of any representations received by the National Assembly from any other person in relation to the appeal; and

(b) specify a period of not less than 2 weeks within which any written comments on the representations must be received by the National Assembly.

(3) The National Assembly may disregard comments made by the local planning authority under paragraph (2)(b) if the authority has failed to give the notice required by regulation 5.

### **Allowing further time**

9. The National Assembly may in a particular case give directions which extend the time limits prescribed by these Regulations.

### **Decision on an application**

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 the National Assembly 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" means the time limits prescribed by these Regulations or by any direction given under regulation 9.

### **Notification of decision**

11. 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 local planning authority;

(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.

### **Transmission of documents**

**12.** - (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.

### **Revocation and transitional provisions**

**13.** - (1) Subject to paragraph (3), the Town and Country Planning (Appeals) (Written Representations Procedure) Regulations 1987<sup>[6]</sup> ("the 1987 Regulations") are revoked so far as they apply to Wales<sup>[7]</sup>.

(2) Subject to paragraph (3), Part IV (regulations 11 to 16) of the Town and Country Planning (Trees) Regulations 1999<sup>[8]</sup> ("the 1999 Regulations") is revoked so far as it applies to Wales.

(3) Subject to paragraph (4), any appeal to which the 1987 Regulations or, as the case may be, the 1999 Regulations applied which has not been determined on the date when these Regulations come into force is to be continued under the 1987 Regulations or the 1999 Regulations, as the case may be.

(4) Where a decision of the National Assembly on an appeal to which the 1987 Regulations or, as the case may be, the 1999 Regulations applied is subsequently quashed in proceedings before any court, the decision is to be re-determined in accordance with these Regulations and not the 1987 Regulations or, as the case may be, the 1999 Regulations.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998<sup>[9]</sup>

*D.Elis-Thomas*

The Presiding Officer of the National Assembly

25th February 2003

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### **EXPLANATORY NOTE**

*(This note does not form part of the Regulations)*

These Regulations lay down the procedure and time limits in connection with the determination of an -

- (a) application which has been referred to the National Assembly for Wales ("the National Assembly") under section 77 of the Town and Country Planning Act 1990 ("the Planning Act");
- (b) appeal under section 78 of the Planning Act (including where that section has been applied to tree preservation orders);
- (c) appeal under section 208 of the Planning Act;
- (d) application for listed building consent which has been referred to the National Assembly under section 12 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act") (other than by virtue of regulation 13(3) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 ("the Listed Buildings Regulations")), or for the variation or discharge of conditions referred to it under that section as applied by section 19 of that Act;
- (e) appeal under section 20 of the Listed Buildings Act;
- (f) application for conservation area consent referred, other than where the application is deemed to have been referred by virtue of regulation 13(3) of the Listed Buildings Regulations, to the National Assembly under section 12 of the Listed Buildings Act (including an application to which that section is applied by section 19 of that Act), as those sections are applied by section 74(3) of that Act;
- (g) appeal under section 20 of the Listed Buildings Act, as that section is applied by section 74(3) of that Act,

where those matters are to be disposed of on the basis of written representations.

Section 77 of the Planning Act empowers the National Assembly to direct a local planning authority ("the authority") to refer to the National Assembly for determination any application for planning permission, or for approval required under a development order, which has been made to the authority.

Section 78 of the Planning Act confers a right of appeal to the National Assembly against certain planning decisions of the authority and where the authority fails to notify such a planning decision within the prescribed periods. The section is applied to appeals against decisions to refuse consent, to grant conditional consent, to give a direction under a tree preservation order or to refuse an application for consent, agreement or approval required under such a direction (or to fail to determine any of the above within the required time limit) in relation to tree preservation orders.

Section 208 of the Planning Act confers a right of appeal to the National Assembly on a person on whom a tree preservation enforcement notice has been served under section 207(1) of that Act.

Section 12 of the Listed Buildings Act empowers the National Assembly to direct a local planning authority to refer to the National Assembly for



determination any application for listed building consent which has been made to the authority. These Regulations apply to such referrals, except where the referral is deemed to have been made, by a local planning authority in respect of its own application, under regulation 13 of the Listed Buildings Regulations.

Section 19 of that Act enables a person to apply to the authority for the variation or discharge of conditions contained in a listed building consent which that authority has previously given and section 20 of that Act provides a person aggrieved by a decision of the authority with a right of appeal to the National Assembly. Section 74 of the Listed Buildings Act applies those functions to conservation area consents.

The applicant or, as the case may be, the appellant, and the authority, are entitled in any appeal proceedings to appear before, and be heard by, a person appointed by the National Assembly but they may agree instead for the appeal to be determined on the basis of written representations and supporting documents.

These Regulations replace, subject to the transitional provisions in regulation 13 of these Regulations, the Town and Country Planning (Appeals) (Written Representations Procedure) Regulations 1987 (S.I. 1987/701) ("the 1987 Regulations"), and revoke Part IV (regulations 11 to 16) of the Town and Country Planning (Trees) Regulations 1999 (S.I. 1999/1892) ("the 1999 Regulations"), in relation to Wales.

The 1987 Regulations were revoked and replaced in relation to England by the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000 (S.I. 2000/1628). Part IV of the 1999 Regulations remains in force in England.

The main changes made by these Regulations are that -

(a) they apply to cases where a planning application has been required to be referred to the National Assembly under section 77 of the Planning Act (the "call-in" procedure), to a right of appeal under section 78 of the Planning Act against planning decisions and failure to take such decisions (and to appeals to which section 78 of that Act is applied by tree preservation order legislation), to a right of appeal under section 208 of the Planning Act against the service by a local planning authority of a tree preservation order enforcement notice and to applications and appeals relating to listed building consent or for the variation or discharge of conditions contained in a listed building consent (and to those provisions applied to conservation areas) under the Listed Buildings Act;

(b) the authority must notify statutory consultees and interested persons of the appeal within 2 weeks of the starting date and the power to make confidential representations has been removed (regulation 5);

(c) strict time limits for the submission of representations and further comments on representations have been imposed. The National Assembly is required to forward copies of representations and comments to the other parties as soon as practicable after receipt (regulation 7);

(d) time limits are extended for notified interested parties to send representations to the National Assembly and the National Assembly has

the power to disregard comments made by the local planning authority on interested persons representations where the local planning authority has not notified interested persons correctly (regulation 8);

(e) the National Assembly is given power to disregard written representations not received within the relevant time limits (regulation 10); and

(f) documents are authorised to be sent by means of electronic communication (regulation 12).

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*Notes:*

[1] 1990 c.8; section 323 was amended by section 18(1) of, and paragraph 26 of Schedule 3 to, the Tribunals and Inquiries Act 1992 (c.53).[back](#)

[2] 1990 c.9; 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.[back](#)

[3] *See* article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and article 4 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253 (W.5)).[back](#)

[4] S.I. 1990/1519.[back](#)

[5] 2000 c.7.[back](#)

[6] S.I. 1987/701.[back](#)

[7] The 1987 Regulations were revoked and replaced so far as they applied to England by the Town and Country Planning (Appeals) (Written Representations) (England) Regulations 2000 (S.I. 2000/1628), regulation 12.[back](#)

[8] S.I. 1999/1892.[back](#)

[9] 1998 c.38.[back](#)

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