WELSH STATUTORY INSTRUMENTS

# 2012 No. 793 (W.108)

# TOWN AND COUNTRY PLANNING, WALES

## The Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012

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| *Made - - - -* | *10 March 2012* |
| *Laid before the National Assembly for Wales - -* | *13 March 2012* |
| *Coming into force - -* | *30 April 2012* |

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 2, 10, 11, 19, 20, 21, 25, 28, 29, 32, 42, 74, 82, 82B, 82F, 91(**1**) and 93 of the Planning (Listed Buildings and Conservation Areas) Act 1990(**2**) and now exercisable by them(**3**), make the following Regulations.

### Title, commencement and application

**1.**—(1) The title of these Regulations is the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 and they come into force on 30 April 2012.

(2) These Regulations apply to Wales.

### Interpretation

**2.**—(1) In these Regulations—

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

(**1**) *See* the definition of "prescribed".

(**2**) 1990 c. 9. Sections 2 and 32(1) were amended by section 20(4) and Schedule 6, paragraph 25 of the Local Government (Wales) Act 1994 (c. 19). Section 10 was amended by sections 42 and 118 of the Planning and Compulsory Purchase Act 2004 (c. 5) ("the 2004 Act"). Section 32(4) was amended by section 31 and Schedule 6, paragraph 44 of the Planning and Compensation Act 1991 (c. 34) ("the 1991 Act") and subsection (4A) was inserted by Schedule 10, paragraph 33 of the Environment Act 1990 (c. 25). Section 74(3) was amended by S.I. 2006/1281. Section 82 was amended by section 25 and Schedule 3, paragraph 24 of the 1991 Act and subsection (1) was temporarily amended by section 6 and Schedule 4 of the Planning (Consequential Provisions) Act 1990 (c. 11) until such day as may be appointed by Order under that Schedule. Sections 82B and 82F were inserted by sections 83 and 79 of the 2004 Act respectively. Section 93(1) was amended by Schedule 10, paragraph 33 of the Environment Act and subsections (6A) and (6B) were inserted by section 118 and Schedule 6 of the 2004 Act.

(**3**) Functions under those sections, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), those functions are now exercisable by the Welsh Ministers.

"electronic communication" ("*cyfathrebiad electronig*") has the meaning given in section 15(1) of the Electronic Communications Act 2000(**4**).

(2) In these Regulations, in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically—

(a) the expression "address" ("*cyfeiriad*") includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to another person, the obligation is not fulfilled unless the person on whom it is imposed provides a postal address;

(b) references to forms, plans, notices and other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(3) Paragraphs (4) to (7) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any form, plan, notice or other document to any other person.

(4) The requirement must be taken to be fulfilled where the form, plan, notice or other document transmitted by means of the electronic communication is—

(a) capable of being accessed by the recipient,

(b) legible in all material respects, and

(c) sufficiently permanent to be used for subsequent reference.

(5) In paragraph (4), "legible in all material respects" ("*yn ddarllenadwy ym mhob manylyn o bwys*") means that the information contained in the form, plan, notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Where the electronic communication is received outside the recipient's business hours, it must be taken to have been received on the next working day; and for this purpose and the purposes of paragraph (2) of regulation 8, "working day" ("*diwrnod gwaith*") means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

(7) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (4), and "written" ("*yn ysgrifenedig*") and cognate expressions are to be construed accordingly.

**Applications for listed building consent or for conservation area consent**

**3.**—(1) Subject to paragraph (7), an application for listed building consent or conservation area consent must—

(a) be made in writing to a local planning authority on a form published by the Welsh Ministers (or a form to substantially the same effect);

(b) include the particulars specified or referred to in the form; and

(c) be accompanied, whether electronically or otherwise, by—

(i) such plans, drawings and information as are necessary to describe the works which are the subject of the application;

(ii) except where the application is made by electronic communication or the local planning authority indicate that fewer are required, 3 copies of the form; and

(iii) except where they are submitted by electronic communication or the local planning authority indicate that fewer are required, 3 copies of any plans, drawings or information accompanying the application referred to in paragraph (i).

(**4**) 2000 c. 7. Section 15(1) was amended by section 406(1) and Schedule 17, paragraph 158 of the Communications Act 2003 (c. 21).

(2) Any plans or drawings required to be provided by paragraph (1)(c)(i) must be drawn to an identified scale and, in the case of plans, must show the direction of north.

(3) When the local planning authority with whom the application has to be lodged receive—

(a) an application which complies with the requirements of paragraph (1);

(b) the certificate required by regulation 7;

(c) in a case to which regulation 6 applies, the design and access statement;

the authority must, as soon as is reasonably practicable, send to the applicant an acknowledgement in the terms (or substantially in the terms) set out in Part 1 of Schedule 1.

(4) Where, after sending an acknowledgement as required by paragraph (3), the local planning authority form the opinion that the application is invalid they must, as soon as is reasonably practicable, notify the applicant that the application is invalid.

(5) Where a valid application under paragraph (1) has been received by a local planning authority, the time within which the authority must give notice to the applicant of their decision or of the reference of the application to the Welsh Ministers is a period of 8 weeks beginning with the date the application and the certificate under regulation 7 are lodged with the authority or (except where the applicant has already given notice of appeal to the Welsh Ministers) such other period as may at any time be agreed upon in writing between the applicant and the authority.

(6) Every such notice of decision or reference to the Welsh Ministers must be in writing and where the local planning authority decide to grant listed building consent or conservation area consent subject to conditions or to refuse it, the notice must state the reasons for the decision and must be accompanied by a notification in the terms (or substantially in the terms) set out in Part 2 of Schedule 1.

(7) An application for listed building consent or conservation area consent or an application to vary or discharge conditions attached to a listed building consent or conservation area consent made on or after 30 April 2012 and before 31 May 2012, otherwise than by a local planning authority, may be made in writing on a form devised by the local planning authority and must be accompanied by two further copies of the form, plans and drawings.

**Applications to vary or discharge conditions attached to listed building consent or conservation area consent**

**4.**—(1) An application to a local planning authority for the variation or discharge of conditions attached to a listed building consent or conservation area consent granted in respect of that building must be made in accordance with regulation 3(1).

(2) Paragraphs (3) to (6) of regulation 3 have effect in relation to an application under this regulation as they have effect in relation to an application under regulation 3(1), except that for the reference in regulation 3(6) to a notification in the terms set out in Part 2 of Schedule 1, there is substituted reference to a notification in the terms set out in Part 3 of that Schedule.

**Application for listed building or conservation area consent in respect of Crown land**

**5.** The following provisions of these Regulations, in their application to the making and determination of applications for listed building consent and conservation area consent in respect of Crown land, have effect subject to the following modifications—

(a) in regulation 3(3)(b), for "the certificate required by regulation 7" substitute "the certificate or other document required by regulation 7";

(b) in regulation 7—

(i) in paragraph (1) after "accompanied by" insert "the documents described in paragraph (1A) or", and

(ii) after paragraph (1) insert—

"(1A) An application for listed building or conservation area consent in respect of Crown land must be accompanied by—

(a) a statement that the application is made in respect of Crown land; and

(b) where the application is made by a person authorised in writing by the appropriate authority, a copy of that authorisation."

**Design and access statements**

**6.**—(1) Any application to a local planning authority for listed building consent must be accompanied by a statement ("a design and access statement") explaining—

(a) the design principles and concepts that have been applied to the works; and

(b) subject to paragraph (4), how issues relating to access to the building have been dealt with.

(2) A design and access statement must, in relation to design—

(a) explain the design principles and concepts that have been applied to the following aspects of the works—

(i) appearance;

(ii) environmental sustainability;

(iii) layout; and

(iv) scale; and

(b) explain how the principles and concepts referred to in sub-paragraph (a) take account of—

(i) the special architectural or historic importance of the building;

(ii) the particular physical features of the building that justify its designation as a listed building; and

(iii) the building's setting.

(3) Subject to paragraph (4), a design and access statement must, in relation to access, explain—

(a) the policy or approach adopted as to access, including—

(i) what alternative means of access have been considered; and

(ii) how policies relating to access in the development plan(**5**) have been taken into account;

(b) how the policy or approach adopted as to access takes account of—

(i) the special architectural or historic importance of the building;

(ii) the particular physical features of the building that justify its designation as a listed building; and

(iii) the building's setting;

(c) how any specific issues which might affect access to the building have been addressed; and

(d) how features which ensure access to the building will be maintained.

(4) Paragraphs (1)(b) and (3) do not apply in relation to an application for listed building consent to carry out works affecting only the interior of a building.

(5) In this regulation—

(**5**) *See* sections 38 and 62 of the 2004 Act; the transitional provisions in article 3 of the Planning and Compulsory Purchase Act 2004 (Commencement No.6, Transitional Provisions and Savings) Order 2005 (S.I. 2005/2847) and the transitional provisions of Part III of Schedule 5 to, the Local Government (Wales) Act 1994 (c. 19).

"appearance" ("*ymddangosiad*"), in relation to the works and the building to which the works relate, means the aspects of the works and the building which determine the visual impression they make, including the external built form of the works and the building, their architecture, features, materials, decoration, lighting, colour and texture;

"layout" ("*cynllun*") means the way in which the works are situated and orientated in relation to the building to which the works relate and to other buildings, routes and spaces; and

"scale" ("*graddfa*") means the extent and dimensions of the works in relation to the building and its surroundings.

**Certificate to accompany applications and appeals**

**7.**—(1) A local planning authority must not entertain any application under regulation 3 or 4 unless it is accompanied by one of the following certificates signed by or on behalf of the applicant—

(a) a certificate stating that, at the beginning of the period of 21 days ending with the date of the application, no person (other than the applicant) was the owner of the building or any part of it;

(b) a certificate stating that the applicant has given the requisite notice of the application to all persons (other than the applicant) who at the beginning of that period were owners of the building or any part of it, and setting out the names of those persons, the addresses at which notice of the application was given to them respectively, and the date of service of each such notice;

(c) a certificate stating that the applicant is unable to issue a certificate in accordance with either sub-paragraphs (a) or (b), that the applicant has given the requisite notice of the application to such one or more of the persons mentioned in sub-paragraph (b) as are specified in the certificate (setting out their names, the addresses at which notice of the application was given to them respectively, and the date of service of each such notice), that the applicant has taken such steps as are reasonably open to them (specifying the steps taken) to ascertain the names and addresses of the remainder of those persons and that the applicant has been unable to do so;

(d) a certificate stating that the applicant is unable to issue a certificate in accordance with sub-paragraph (a), that the applicant has taken such steps as are reasonably open to them (specifying the steps taken) to ascertain the names and addresses of the persons mentioned in sub-paragraph (b) but has been unable to do so.

(2) Any such certificate as is mentioned in paragraph (1)(c) or paragraph (1)(d) must also contain a statement that the requisite notice of the application, as set out in the certificate, has been on a date specified in the certificate (which must not be earlier than the beginning of the period mentioned in paragraph (1)(a)) published in a local newspaper circulating in the locality in which the building is situated.

(3) Where an application under regulation 3 or 4 is accompanied by such a certificate as is mentioned in paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d), the local planning authority—

(a) must not determine the application before the end of the period of 21 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate, or, if later, the date of publication of a notice as so mentioned;

(b) must in determining the application take into account any representations relating to it which are made to them before the end of that period by any person who satisfies them that the person is an owner of the building or any part of it; and

(c) must give notice of their decision to every person who has made representations which they were required to take into account in accordance with sub-paragraph (b).