WELSH STATUTORY INSTRUMENTS

2006 No. 1387 (W.137)

TOWN AND COUNTRY PLANNING, WALES

The Planning (National Security Directions and Appointed Representatives) (Wales) Regulations 2006

Made - - - -	*23 May 2006*
Coming into force - -	*7 June 2006*

The National Assembly for Wales ("the National Assembly"), in exercise of its powers under section 321(7) of the Town and Country Planning Act 1990 (as modified by section 321B(3) of that Act)(**1**), paragraph 6A(3) of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) Act 1990 (as modified by paragraph 8(3) of that Schedule)(**2**) and paragraph 6A(3) of the Schedule to the Planning (Hazardous Substances) Act 1990 (as modified by paragraph 8(3) of that Schedule) (**3**),makes the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Planning (National Security Directions and Appointed Representatives) (Wales) Regulations 2006 and they come into force on 7 June 2006.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations–

"affected person" ("person yr effeithir arno") means the person who will be prevented, by direction, from hearing or inspecting closed evidence at a local inquiry if a direction is given;

"appointed representative" ("cynrychiolydd penodedig") means a person appointed by the Counsel General to the National Assembly under–

(a) section 321(5) or (6) of the principal Act as modified by section 321B(2) of that Act;

(b) paragraph 6A(1) or (2) of Schedule 3 to the Listed Buildings Act as modified by paragraph 8(2) of Schedule 3 to that Act; or

(**1**) 1990 c. 8. Subsections (5) to (12) of section 321, and section 321B, were inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), sections 80(1) and 81(1) respectively.

(**2**) 1990 c. 9. Paragraphs 6A and 8(3) were inserted by the Planning and Compulsory Purchase Act 2004, sections 80(3) and 81(2) respectively.

(**3**) 1990 c. 10. Paragraphs 6A and 8(3) were inserted by the Planning and Compulsory Purchase Act 2004, sections 80(4) and 81(3) respectively.

(c) paragraph 6A(1) or (2) of the Schedule to the Hazardous Substances Act, as modified by paragraph 8(2) of the Schedule to that Act;

"closed evidence" ("tystiolaeth gaeedig") means evidence which is subject to a direction;

"the directing authority" ("yr awdurdod cyfarwyddo") means the National Assembly or, as the case may be, the Secretary of State;

"direction" ("cyfarwyddyd") means a direction given by the directing authority under–

(a) section 321(3) of the principal Act;

(b) paragraph 6(6) of Schedule 3 to the Listed Buildings Act; or

(c) paragraph 6(6) of the Schedule to the Hazardous Substances Act;

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

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

"the Hazardous Substances Act" ("y Ddeddf Sylweddau Peryglus") means the Planning (Hazardous Substances) Act 1990;

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

"the parties" ("y part 149 on") means–

(a) the person making the request for a direction; and

(b) the appointed representative;

"potentially closed evidence" ("tystiolaeth gaeedig bosibl") means evidence in respect of which a request for a direction has been made;

"the principal Act" ("y brif Ddeddf")means the Town and Country Planning Act 1990; and

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

(2) In these Regulations, and 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;

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

(3) Paragraphs (4) to (8) 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 statement, notice or other document to any other person ("the recipient").

(4) The requirement will be taken to be fulfilled where the 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" means that the information contained in the 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.

(**4**) 2000 c. 7.

(6) Where the electronic communication is received by the recipient outside the recipient's business hours, it will be taken to have been received on the next working day; and for this purpose "working day" 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" and cognate expressions are to be construed accordingly.

(8) A requirement in these Regulations to send more than one copy of a statement or other document is complied with by sending one copy only of the statement or other document in question in electronic form.

Application of certain regulations in particular cases

3.—(1) These Regulations apply in a case where the directing authority is considering giving or has given a direction under any of the following provisions–

(a) section 321(3) of the principal Act;

(b) paragraph 6(6) of Schedule 3 to the Listed Buildings Act; or

(c) paragraph 6(6) of the Schedule to the Hazardous Substances Act.

(2) Regulation 4 applies to all appointed representatives.

(3) Regulations 5 to 14 apply in relation to a case where an appointed representative has been appointed under–

(a) section 321(5) of the principal Act;

(b) paragraph 6A(1) of Schedule 3 to the Listed Buildings Act; or

(c) paragraph 6A(1) of the Schedule to the Hazardous Substances Act.

Functions of an appointed representative

4.—(1) The first function of an appointed representative is to represent the interests of the affected person by–

(a) taking instructions from the affected person before receiving copies of potentially closed evidence;

(b) making written representations as to whether a direction should be given; and

(c) in respect of a hearing held in accordance with regulation 10–

(i) dealing with preliminary matters,

(ii) making submissions, and

(iii) cross-examining witnesses.

(2) The second function of an appointed representative is to represent the interests of the affected person by–

(a) where the appointed representative has been appointed under–

(i) section 321(6) of the principal Act;

(ii) paragraph 6A(2) of Schedule 3 to the Listed Buildings Act; or

(iii) paragraph 6A(2) of the Schedule to the Hazardous Substances Act,

taking instructions from the affected person before receiving copies of closed evidence;

(b) dealing with preliminary matters in relation to closed evidence in respect of a local inquiry;

(c) making submissions or cross-examining witnesses, in relation to closed evidence, at a local inquiry; and

(d) attending site visits.

(3) The third function of an appointed representative is to ensure that the copies of the closed evidence or potentially closed evidence are returned to the person who supplied them as soon as practicable after–

(a) the directing authority has given notice under regulation 14 that it does not intend to give a direction;

(b) the local inquiry, to which the closed evidence relates, has ended; or

(c) the National Assembly has notified the appointed representative that no local inquiry, to which the closed evidence relates, will be held,

whichever is the last.

(4) The fourth function of an appointed representative is to make applications to the Court in relation to any of the appointed representative's other functions.

(5) For the purposes of any of the functions, the appointed representative may discuss any matter relating to the closed evidence or potentially closed evidence with–

(i) the person who has supplied the closed or potentially closed evidence to the directing authority, or,

(ii) a person specified, or of any description specified, in the direction.

Acknowledgement of request for a direction

5.—(1) Any person may request a direction by giving notice in writing to the directing authority to that effect.

(2) As soon as practicable after receiving a request for a direction, the directing authority must acknowledge receipt of the request in writing.

Publicity

6.—(1) As soon as practicable after receiving a request for a direction, the fact that a request has been received must be publicised by the directing authority in the manner prescribed by this regulation.

(2) In the case of a request which relates to an application for planning permission for development which–

(a) is an EIA application accompanied by an environmental statement;

(b) does not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated; or

(c) would affect a right of way to which Part 3 of the Wildlife and Countryside Act 1981(**5**)(public rights of way) applies,

the request must be publicised in the manner specified in paragraph (3).

(3) A request falling within paragraph (2) ("a paragraph (2) request") must be publicised by giving notice–

(a) by site display in at least one place on or near the land to which the application for planning permission relates for not less than 2 weeks; and

(b) by local advertisement for 2 consecutive weeks contemporaneous with the notice period in sub-paragraph (a).

(**5**) 1981 c. 69. Relevant amendments were made by the Countryside and Rights of Way Act 2000, section 51 and Schedule 5, Part I.