WELSH STATUTORY INSTRUMENTS

2004 No. 3240 (W.282)

LAND, WALES
ANTI-SOCIAL BEHAVIOUR, WALES

The High Hedges (Appeals) (Wales) Regulations 2004

Made - - - -	*8 December 2004*
Coming into force - -	*31 December 2004*

The National Assembly for Wales ("the National Assembly"), in exercise of the powers conferred upon it by section 72 of the Anti-social Behaviour Act 2003 ("the Act")(**1**), hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the High Hedges (Appeals) (Wales) Regulations 2004 and come into force on 31 December 2004.

(2) These Regulations apply to appeals made to the National Assembly under section 71 of the Act in relation to hedges situated in Wales.

Interpretation

2. In these Regulations—

"appeal" ("*apêl*") means an appeal under section 71 of the Act;

"appeal form" ("*ffurflen apêl*) means a document in the form supplied by the National Assembly for the purpose of proceedings under these Regulations or a document containing all the information required by that form;

"appointed person" ("*person penodedig*") means a person appointed under section 72(3) of the Act;

"the parties" ("*y partïon*") means—

(a) the appellant;

(b) the relevant authority;

(c) every other person who is a complainant in relation to the complaint by reference to which a remedial notice was given; and

(**1**) 2003 c. 38.

(d) every owner or occupier of the land on which the high hedge is situated;

"questionnaire" ("*holiadur*") means a document in the form supplied by the National Assembly for the purpose of proceedings under these Regulations or a document containing all the information required by that form;

"relevant time limits" ("*terfynau amser perthnasol*") means the time limits prescribed by these Regulations or, where the National Assembly has exercised its power under regulation 22, any such later time limit as has been determined under that regulation; and

"starting date" ("*dyddiad cychwyn*") means, in relation to an appeal, the date notified by the National Assembly under regulation 10.

Grounds of appeal against the issue of remedial notices

3.—(1) An appeal under section 71(1)(a) of the Act against the issue of a remedial notice by the relevant authority may be made on the grounds that—

(a) the height of the high hedge specified in the remedial notice is not adversely affecting the complainant's reasonable enjoyment of the domestic property so specified;

(b) no action should be taken in relation to the high hedge specified in the remedial notice to remedy the adverse effect on the complainant's reasonable enjoyment of the domestic property so specified or to prevent that adverse effect recurring;

(c) the action specified in the remedial notice exceeds what is necessary to remedy the adverse effect of the high hedge or to prevent that adverse effect recurring; or

(d) the period specified in the remedial notice to carry out the action so specified falls short of what should reasonably be allowed.

(2) An appeal under section 71(1)(a) of the Act by a complainant in relation to the issue of a remedial notice by the relevant authority may be made on the ground that the action specified in the remedial notice is insufficient to remedy the adverse effect of the high hedge on the complainant's reasonable enjoyment of the domestic property so specified or to prevent recurrence of the adverse effect.

Grounds of appeal against the withdrawal, waiver or relaxation of remedial notice

4.—(1) An appeal under section 71(1)(b) or (c) of the Act against the withdrawal of a remedial notice, or the waiver or relaxation of its requirements, may, provided the conditions specified in paragraph (2) are satisfied, be made on any of the grounds specified in paragraph (3).

(2) The conditions referred to in paragraph (1) are that the—

(a) relevant authority has not issued another remedial notice in respect of the same high hedge; and

(b) person wishing to appeal did not consent to the withdrawal of the remedial notice or (as the case may be) the waiver or relaxation of its requirements.

(3) The grounds referred to in paragraph (1) are that—

(a) there has been no material change in circumstances since the complaint by reference to which the remedial notice was issued which would justify the withdrawal of the remedial notice or (as the case may be) the waiver or relaxation of its requirements;

(b) the requirements of the remedial notice, as waived or relaxed, are insufficient to remedy the adverse effect of the high hedge on the complainant's reasonable enjoyment of the domestic property specified in the remedial notice or to prevent recurrence of that adverse effect; or

(c) in the case of an appeal by an owner or occupier of the neighbouring land, the requirements of the remedial notice, as waived or relaxed, exceed what is necessary to remedy the adverse effect of the high hedge on the complainant's reasonable enjoyment of the domestic property specified in the notice or to prevent the recurrence of that adverse effect.

Grounds of appeal where the relevant authority decides that a complaint should not proceed

5. An appeal by a complainant under section 71(3) of the Act (where the relevant authority decides either or both of the matters specified in section 68(3) of the Act otherwise than in the complainant's favour) may be made on the ground that the height of the high hedge specified in the complaint is adversely affecting the complainant's reasonable enjoyment of the domestic property so specified and action should be taken with a view to remedying the adverse effect of the high hedge specified in the complaint on the complainant's reasonable enjoyment of the domestic property so specified or preventing its recurrence.

Determination of appeals by the National Assembly

6.—(1) When considering an appeal, the National Assembly, or any person appointed by it under section 72(3) of the Act to hear and determine the appeal on its behalf, is entitled to consider any evidence or other matter irrespective of whether such evidence or matter was not, or was not able to be, considered by the relevant authority when it reached the decision to which the appeal relates.

(2) The appellant must establish the ground or grounds of the appeal and, if that person fails to do so, the appeal must be dismissed.

Appointment, and revocation of the appointment, of an appointed person

7.—(1) An appointment under section 72(3) of the Act must be in writing and may—

(a) relate to any particular appeal or matter specified in the appointment or to appeals or matters of a description so specified;

(b) provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment; and

(c) by notice in writing given to the appointed person, be revoked at any time by the appeal authority in respect of any appeal or matter which has not been determined by the appointed person before that time.

(2) An appointed person has, in relation to any appeal or matter to which the appointment relates, the same powers and duties as the appeal authority, other than any function of—

(a) making regulations;

(b) holding a hearing; or

(c) appointing a person for the purpose of—

(i) enabling persons to attend and take part in a hearing conducted by the person so appointed, or

(ii) referring any question or matter to that person.

(3) Where, under paragraph (1)(c), the appeal authority revokes an appointment in respect of any appeal or matter, the appeal authority must, unless it proposes to determine the appeal or matter itself, appoint another person to determine the appeal or matter instead.

(4) Where a new appointment is made, the consideration of the appeal or matter, or any hearing in connection with it, must be begun afresh; but, where this is the case, no person is entitled to make fresh representations or to modify or withdraw any representations already made.

(5) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates is to be treated for all purposes as done or omitted to be done by the appeal authority, except to the extent that such action or omission relates to—

(a) so much of any contract made between the appeal authority and the appointed person as relates to the exercise of the function; or

(b) any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in this paragraph.

Notice of Appeal

8.—(1) A person who wishes to appeal must give notice of that appeal to the National Assembly by sending to the National Assembly, so as to be received within the period specified in section 71(4) of the Act, the appeal form together with a copy of any supporting documents.

(2) The appellant must, as soon as is reasonably practicable thereafter, send to the relevant authority, a copy of the appeal form and any other documents referred to in paragraph (1).

Preliminary Information

9. The relevant authority must, on receipt of a notice of appeal under regulation 8, forthwith inform the National Assembly and the appellant—

(a) of the name and address of all persons, other than the appellant, who are parties to the appeal; and

(b) whether it wishes the appeal to be determined by an exchange of written representations or following the holding of a hearing.

Starting Date

10. The National Assembly must, as soon as practicable after—

(a) receipt of the notice of appeal given in accordance with regulation 8 and the preliminary information under regulation 9, notify the parties—

(i) of the reference number allocated to the appeal,

(ii) whether the appeal is to be determined by an exchange of written representations or, where either the appellant or the relevant authority (or both) has so requested, following the holding of a hearing, and

(iii) of the address to which written communications to the National Assembly about the appeal are to be sent; and

(b) receipt of sufficient information to enable it to entertain the appeal, notify the parties of the starting date.

Notice to interested persons

11.—(1) The relevant authority must give notice of the appeal within 2 weeks of the starting date to any persons, other than the parties, who have made representations to the relevant authority about the decision to which the appeal relates.

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

(a) state the name of the appellant and the address of the land where the high hedge to which the appeal relates is situated;

(b) set out the matters notified by the National Assembly to the parties under regulation 10;

(c) describe the nature of the appeal and the grounds on which it has been made;

(d) state that copies of any representations made by any person mentioned in paragraph (1) of this regulation will be sent to the National Assembly and to each of the parties;

(e) state that further written representations may be sent to the National Assembly so as to be received within 6 weeks of the starting date and that, where such representations are sent, three copies are required to be sent;

(f) state that any such representations will be considered by the National Assembly when determining the appeal unless any person withdraws them within 6 weeks of the starting date; and

(g) state the procedure which is to be used to determine the appeal.

(3) The National Assembly must send a copy of any further representations it receives under paragraph (2)(e) to each of the parties as soon as practicable after receiving them.

Questionnaire

12.—(1) The relevant authority must send to the National Assembly, and copy to each of the other parties, in each case so as to be received within 2 weeks of the starting date, a—

(a) completed questionnaire; and

(b) copy of each of the documents referred to in it.

(2) The questionnaire must state the date on which it was sent to the National Assembly.

Exchange of evidence

13.—(1) This regulation applies where an appeal is to be determined by written representations or following the holding of a hearing and, additionally, where an appeal is to be determined—

(a) by written representations, regulations 14 and 19 to 22 apply;

(b) following the holding of a hearing, regulations 15 to 22 apply.

(2) If any of the parties wish to make any representations further to the—

(a) notice of appeal and any documents supporting it; or

(b) questionnaire and any documents submitted with it,

that party must send three copies of those further representations to the National Assembly so as to be received within 6 weeks of the starting date and the National Assembly must, as soon as practicable after receipt, send a copy of any further representations to each of the other parties.

(3) If any of the parties wish to comment on any other party's representations, or on any representations made pursuant to regulation 11(2)(e), that party must send three copies of these to the National Assembly so as to be received within 9 weeks of the starting date.

(4) The National Assembly may disregard further information received from any of the parties which it has not received within 9 weeks of the starting date unless the National Assembly has requested the further information and the information so requested is received by the National Assembly within such period as it specified in writing when it made the request.

Appeals determined by an exchange of written representations

14.—(1) The National Assembly may, after the expiration of any time limits within which any step is required or permitted to be taken in accordance with these Regulations, and after giving to the appellant and the relevant authority written notice of its 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.