WELSH STATUTORY INSTRUMENTS

2004 No. 3157 (W.274)

TOWN AND COUNTRY PLANNING, WALES

The Town and Country Planning (Electronic Communications) (Wales) (No. 2) Order 2004

Made - - - -	*30 November 2004*
Coming into force - -	*1 January 2005*

WHEREAS the National Assembly for Wales, having considered that its authorisation by this Order of the use of electronic communications for any purpose is such that the extent, if any, to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made of electronic communications than in other cases

NOW THEREFORE, the National Assembly for Wales, in exercise of the powers conferred by sections 8, 9 and 10 of the Electronic Communications Act 2000(**1**), and with the consent of the Secretary of State for Wales(**2**), hereby makes the following Order:

Citation, commencement and application

1.—(1) This Order may be cited as the Town and Country Planning (Electronic Communications) (Wales) (No. 2) Order 2004 and comes into force on 1 January 2005.

(2) This Order applies to land in Wales.

Amendment of regulations relating to planning appeals

2. The Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003(**3**) are amended in accordance with Schedule 1 to this Order.

Amendment of regulations relating to enforcement notices and appeals

3.—(1) The Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003(**4**) are amended in accordance with Schedule 2 to this Order.

(**1**) 2000 c. 7. For the purposes of this Order, by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253) (W.5), the National Assembly exercises the relevant functions in, or under, the Town and Country Planning Act 1990 (c. 8) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9).
(**2**) See section 10(5) of the Electronic Communications Act 2000 (c. 7).
(**3**) S.I. 2003/390 (W.52).
(**4**) S.I. 2003/394 (W.53).

(2) The Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003(**5**) are amended in accordance with Schedule 3 to this Order.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(**6**).

John Marek
The Deputy Presiding Officer of the National Assembly

30 November 2004

(**5**) S.I. 2003/395 (W.54).
(**6**) 1998 c. 38.

SCHEDULE 1 Article 2

Amendment of the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003

1. Renumber regulation 2 (interpretation) as regulation 2(1) and, in the definition of "questionnaire" contained therein, after the word "Regulations", insert—

"; and, for this purpose, a form is taken to be supplied where the National Assembly has published it on a website and has notified the local planning authority of—

(a) publication of the form on the website;

(b) the address of the website; and

(c) the place on the website where the form may be accessed and how it may be accessed".

2. After regulation 2(1), add—

"(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" 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 any other person, the obligation is not fulfilled unless the person on whom it is imposed provides a postal address;

(b) references to notices, representations or other documents, or to copies of such things, include references to such things 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 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.

(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.".

3. In regulation 3 (application of the Regulations), after paragraph (2), add—

"(2A) Where an appellant (or, as the case may be, the appellant and the local planning authority) so informs the National Assembly using electronic communications, the appellant will be taken to have agreed—

(a) to the use of such communications for all purposes of these Regulations relating to the appeal which are capable of being carried out electronically;

(b) that the appellant's address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the appellant's communication so informing the National Assembly; and

(c) that the appellant's deemed agreement under this paragraph will subsist until the appellant gives notice in accordance with regulation 12A of a wish to revoke the agreement,

and the references in paragraphs (1) and (2) of this regulation to an appeal being disposed of on the basis of written representations will not be taken to preclude the use of electronic communications in accordance with this paragraph and regulation 2.".

4. In regulation 7 (representations), at the end, add—

"(9) Where a party to which this regulation applies elects to use electronic communications for submitting, sending, copying, or sending a copy of any representations, questionnaire or other document, this regulation has effect subject to the following modifications—

(a) where the party so electing is the local planning authority, the words "2 copies of" in paragraphs (3) and (7) are omitted;

(b) where the party so electing is the appellant, the words "2 copies of" in paragraphs (4) and (7) are omitted".

5. For regulation 12 (transmission of documents), substitute—

"**12.** Notices or documents required or authorised to be sent or supplied under these Regulations may be sent or supplied by—

(a) post; or

(b) using electronic communications to transmit the notice or document (as the case may be) to a person at such address as may for the time being be specified by that person for such purpose.".

6. After regulation 12, insert—

"**Withdrawal of consent to use of electronic communications**

12A. Where a person is no longer willing to accept the use of electronic communications for any purpose under these Regulations which is capable of being effected electronically, that person must give notice in writing—

(a) withdrawing any address notified to the National Assembly or to a local planning authority for that purpose; or

(b) revoking any agreement entered into with the National Assembly or with a local planning authority for that purpose,

and such withdrawal or revocation will be final and will take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given.".

SCHEDULE 2

Article 3(1)

Amendment of the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003

1. Renumber regulation 2 (interpretation) as regulation 2(1) and, before the definition of "enforcement notice" contained therein, insert the following definition—