WELSH STATUTORY INSTRUMENTS

2004 No. 3156 (W.273)

TOWN AND COUNTRY PLANNING, WALES
TRIBUNALS AND INQUIRIES, WALES

The Town and Country Planning (Electronic Communications) (Wales) (No. 1) 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(**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. 1) Order 2004 and comes into force on 1 January 2005.

(2) This Order applies to land in Wales.

Interpretation

2. In this Order—

"the Listed Buildings Act" means the Planning (Listed Buildings and Conservation Areas) Act 1990(**3**);

(**1**) 2000 c. 7. For the purposes of this Order, the National Assembly has, 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 power to make this Order in respect of its functions in, or under, the Town and Country Planning Act 1990 (c. 8), the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9) and the Environment Act 1995 (c. 25).

(**2**) *See* section 10(5) of the Electronic Communications Act 2000.

(**3**) 1990 c. 9, as amended by the Planning and Compensation Act 1991 (c. 34), the Local Government (Wales) Act 1994 (c. 19) and by other enactments in respect of matters not relevant to this Order.

"the Planning Act" means the Town and Country Planning Act 1990(**4**); and

references to the "Secretary of State" are to be read, in relation to land in Wales, as references to the National Assembly for Wales.

Use of electronic communications for appealing against enforcement notices

3. In section 174(3) of the Planning Act(**5**) (appeal against enforcement notice), repeal "either" and, at the end, add—

"; or

(c) by sending such notice to him using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to him before that date.".

Use of electronic communications for service of notices

4.—(1) Section 329 of the Planning Act(**6**) (service of notices) is amended as follows.

(2) In subsection (1), after paragraph (c), insert—

"(cc) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in subsection (3A), to that person at that address (subject to subsection (3B)); or".

(3) After subsection (3), insert—

"(3A) The condition mentioned in subsection (1)(cc) is that the notice or other document shall be—

(a) capable of being accessed by the person mentioned in that provision;

(b) legible in all material respects; and

(c) in a form sufficiently permanent to be used for subsequent reference,

and for this purpose "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

(3B) Subsection (1)(cc) shall not apply to—

(a) service of a planning contravention notice;

(b) service of a copy of an enforcement notice by a local planning authority;

(c) giving of notice under section 173A of the exercise of powers conferred by subsection (1) of that section;

(d) service under section 181(4) of notice of a local planning authority's intention to take steps required by an enforcement notice;

(e) service of an enforcement notice issued by the Secretary of State;

(f) service of a stop notice, or of notice of withdrawal of a stop notice, by a local planning authority;

(g) service of a stop notice by the Secretary of State;

(**4**) 1990 c. 8, as amended by the Planning and Compensation Act 1991 (c. 34), the Tribunals and Inquiries Act 1992 (c. 53), the Environment Act 1995 (c. 25) and by other enactments in respect of matters not relevant to this Order.

(**5**) Section 174 was amended, and in part repealed, by the Planning and Compensation Act 1991 (c. 34), sections 6(1), 32 and 84, Schedule 7 paragraphs 8 and 22, and Schedule 19, Part 1.

(**6**) Section 329 was amended by the Planning and Compensation Act 1991, section 32 and Schedule 7, paragraphs 8 and 51.

(h) service of a breach of condition notice or of notice of withdrawal of a breach of condition notice;

(i) giving of notice of the making of a tree preservation order, or service of a copy of such an order, in accordance with regulations under section 199;

(j) service of a notice under section 215 requiring steps to be taken to remedy the condition of any land;

(k) service of a notice under section 330 requiring information as to interests in land.".(**7**)

Postal addresses to be provided in response to certain notices requiring information

5. In the following provisions of the Planning Act—

(a) paragraphs (c) and (e) of subsection (3) of section 171C(**8**) (power to require information about activities on land); and

(b) paragraphs (b) and (e) of subsection (2) of section 330 (power to require information as to interests in land),

after "name and", insert "postal".

Insertion of definitions and interpretation provisions

6.—(1) Section 336 of the Planning Act (interpretation) is amended as follows.

(2) In subsection (1), insert the following definitions at the appropriate places—

""address", in relation to electronic communications, means any number or address used for the purposes of such communications;"

""electronic communication" has the same meaning as in the Electronic Communications Act 2000;".

(3) After subsection (4), insert—

"(4A) Where—

(a) an electronic communication is used for the purpose of serving or giving a notice or other document on or to any person for the purposes of this Act, and

(b) the communication is received by that person outside that person's business hours,

it shall be taken to have been received on the next working day, and in this subsection, "working day" means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.".

Use of electronic communications for appeals against listed building enforcement notices

7. In section 39 of the Listed Buildings Act(**9**) (appeal against listed building enforcement notices), in subsection (2), repeal "either" and, at the end, add—

"; or

(**7**) Section 172 was substituted by the Planning and Compensation Act 1991, section 5. Section 183 was substituted in part by the Planning and Compensation Act 1991, section 9(1). Section 187A was inserted by section 2 of that Act. Section 207 was substituted in part by section 23(1) of that Act. Section 330 was amended by the Environment Act 1995, section 78 and Schedule 10, paragraph 32(1).

(**8**) Section 171C was inserted by the Planning and Compensation Act 1991 (c. 34), section 1.

(**9**) Section 39 was amended, and in part repealed, by the Planning and Compensation Act 1991, sections 25 and 84(6) and Schedule 3.

(c) by sending such notice to him using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to him before that date.".

Use of electronic communications for service of notices under the Listed Buildings Act

8.—(1) Section 89 of the Listed Buildings Act(**10**) (application of certain general provisions of principal Act) is amended as follows.

(2) In subsection (1), for "Subject to subsection (2),", substitute "Subject to subsections (1A) and (2),".

(3) After subsection (1), insert—

"(1A) Subsection (1)(cc) of section 329 of that Act shall not apply to—

(a) service of a building preservation notice;

(b) service of a copy of a listed building enforcement notice by a planning authority;

(c) giving of notice under section 38 of this Act of the exercise of powers conferred by subsection (5) of that section; or

(d) service of a listed building enforcement notice issued by the Secretary of State.".(**11**)

Insertion of definitions and interpretation into the Listed Buildings Act

9.—(1) Section 91 of the Listed Buildings Act(**12**) (interpretation) is amended as follows.

(2) In subsection (1), insert the following definitions at the appropriate places—

""address", in relation to electronic communications, means any number or address used for the purpose of such communications;"

""electronic communication" has the same meaning as in the Electronic Communications Act 2000;".

(3) After subsection (5), insert—

"(5A) Where—

(a) an electronic communication is used for the purpose of serving or giving a notice or other document on or to any person for the purposes of this Act, and

(b) the communication is received by that person outside that person's business hours,

it shall be taken to have been received on the next working day; and in this subsection "working day" means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.".

Amendment of the Environment Act 1995 in relation to applications to the mineral planning authority

10.—(1) The Environment Act 1995(**13**) is amended as follows.

(**10**) Subsection (1) of section 89 was amended by the Planning and Compensation Act 1991, section 30(2). Subsection (3) was added by section 29(2) of that Act.

(**11**) Building preservation notices are served under section 3, which was amended by the Local Government (Wales) Act 1994 (c. 19), section 20(4)(b) and Part II of Schedule 6. Listed building enforcement notices are issued under section 38, which was amended, and in part repealed, by the Planning and Compensation Act 1991, sections 25 and 84(6), Schedule 3 and Part I of Schedule 19. Section 46 was amended by the Planning and Compensation Act 1991, section 25 and Part II of Schedule 3 and by the Local Government (Wales) Act 1994, section 20(4)(b) and Part II of Schedule 6.

(**12**) Section 91 is amended in respects not relevant to this Order.

(**13**) 1995 c. 25. Section 96 and Schedules 13 and 14 (mineral planning permissions) and the Town and Country Planning Act 1990 have effect as if those provisions of the Environment Act 1995 were included in Part III of the latter Act: see section 96(2) of

(2) In Schedule 13 (review of old mineral planning permissions)—

(a) in paragraph 1 (interpretation), at the end, add—

"(8) Where an electronic communication is used to make an application to a mineral planning authority under any of paragraphs 6, 7 or 9 below, the applicant shall be taken to have agreed—

(a) to the use of electronic communications for all purposes relating to his application which are capable of being effected using such communications, unless he gives notice in writing to the mineral planning authority in accordance with sub-paragraph (9) below; and

(b) that his address for the purposes of such communications is the address incorporated into, or otherwise logically associated with, his application (or such other address as he may notify in writing to the mineral planning authority).

(9) An applicant may give notice that he is no longer to be taken to have agreed to the use of electronic communications for the purposes mentioned in paragraph (a) of sub-paragraph (8).

(10) Any such notice shall take effect from the date specified in it being not less than seven days from the date on which it is given.";

(b) in paragraph 9 (applications for approval of conditions and appeals in cases where the conditions approved are not those proposed) in sub-paragraph (2)(d), for "an address", substitute "a postal address".

(3) In Schedule 14 (periodic review of mineral planning permissions)—

(a) in paragraph 2 (interpretation), at the end, add—

"(5) Where an electronic communication is used to make an application to a mineral planning authority under paragraph 5 or 6 below, the applicant shall be taken to have agreed—

(a) to the use of electronic communications for all purposes relating to his application which are capable of being effected using such communications, unless he gives notice in writing to the mineral planning authority in accordance with sub-paragraph (6) below; and

(b) that his address for the purposes of such communications is the address incorporated into, or otherwise logically associated with, his application (or such other address as he may notify in writing to the mineral planning authority).

(6) An applicant may give notice that he is no longer to be taken to have agreed to the use of electronic communications for the purposes mentioned in paragraph (a) of sub-paragraph (5).

(7) Any such notice shall take effect from the date specified in it being not less than seven days from the date on which it is given.";

(b) in paragraph 6 (application to determine conditions to which mineral permissions are to be subject), in sub-paragraph (2)(d), for "an address", substitute "a postal address".

the Environment Act 1995. Schedules 13 and 14 were amended by the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), section 3 and Part III of Schedule 1.