WELSH STATUTORY INSTRUMENTS

2004 No. 248 (W.25)

COUNTRYSIDE, WALES

The Vehicular Access Across Common and Other Land (Wales) Regulations 2004

Made - - - -	*4th February 2004*
Coming into force - -	*9th February 2004*

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred on it by section 68 of the Countryside and Rights of Way Act 2000(**1**) and all other powers enabling it in that behalf:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Vehicular Access Across Common and Other Land (Wales) Regulations 2004 and come into force on 9th February 2004.

(2) These Regulations apply to land in Wales.

(3) For the purposes of paragraph (2), "land" means any land which is crossed by a way used as a means of access for vehicles to premises.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Countryside and Rights of Way Act 2000;

"the applicant", "the land" and "the land owner" have the meanings given in regulation 3(2);

"compensation sum" means the amount of compensation payable by the applicant;

"easement" means an easement subsisting at law for the benefit of the premises and giving a right of way for vehicles;

"the parties" means the applicant and the land owner and "party" is to be construed accordingly;

"the premises" means the premises served by the way in respect of which an application for an easement is made; and

"the value of the premises" has the meaning given in regulation 11(4).

(**1**) 2000 c. 37.

(2) Any reference in these Regulations to a numbered regulation is to be construed as a reference to the regulation so numbered in these Regulations.

Entitlement to make an application

3.—(1) An owner of any premises may, as respects a way to which section 68 of the Act applies, apply for the creation of an easement in accordance with these Regulations.

(2) For the purposes of these Regulations, the owner who makes an application is referred to as "the applicant", the land crossed by the way is referred to as "the land" and the person who, for the time being, has the freehold title to the land, is referred to as "the land owner".

Prescribed date

4. The prescribed date for the purpose of section 68(1)(b) of the Act is 5th May 1993.

Nature of easement

5. An easement created in accordance with these Regulations will—

(a) be subject to any limitation agreed by the parties or determined by the Lands Tribunal;

(b) include any right incidental to the right of way agreed by the parties or determined by the Lands Tribunal; and

(c) be subject to any rule of law which would apply to the easement had it been acquired by prescription.

Procedure for making an application

6.—(1) An application for the easement must be made by the applicant serving a notice on the land owner.

(2) The application must be served within 12 months of the date on which these Regulations come into force or, if later, the date on which the relevant use of the way has ceased.

(3) The application must contain the information specified in paragraph 1, and be accompanied by the information specified in paragraph 2, of the Schedule to these Regulations.

Unopposed applications

7.—(1) Where the land owner does not object to the application, the land owner must, within three months of receipt of the application, serve a notice on the applicant, agreeing to the application.

(2) The notice must contain the following information—

(a) the name and address of the land owner and a description of the land owner's interest in the land; and

(b) a statement confirming that, upon payment of the compensation sum, the land owner will provide a written receipt.

(3) The notice must be accompanied by evidence of the land owner's title to the land.

Opposed applications

8.—(1) Where the land owner has objections to the application, the land owner must, within three months of receipt of the application, serve a notice (a "counter notice") on the applicant, objecting to the application.

(2) Objections to the application may be made on the following grounds—

(a) the applicant has served the application after the expiry of the period for service;

(b) the applicant has not provided the information required by regulation 6(3);

(c) information provided by the applicant is not correct;

(d) the easement should be subject to limitations other than those (if any) described in the application;

(e) any rights incidental to the right of way, which are described in the application as being rights which should be included in the easement, are not agreed;

(f) the value of the premises is not agreed.

(3) The counter notice must contain the following information—

(a) the name and address of the land owner and a description of the land owner's interest in the land;

(b) the objections to the application; and

(c) any alternative proposals.

(4) The counter notice must be accompanied by—

(a) any evidence relevant to the objections and alternative proposals; and

(b) evidence of the land owner's title to the land.

Amended application and amended counter notice

9.—(1) Within two months of receipt of a counter notice, the applicant may serve on the land owner an amended application addressing the objections and any alternative proposals set out in the counter notice.

(2) An amended application must contain the information specified in paragraph 1 of the Schedule to these Regulations and must be accompanied by any evidence relevant to the applicant's response to the objections and any alternative proposals set out in the counter notice.

(3) Where the applicant has served an amended application on the land owner, the land owner must, within two months of receipt of the amended application—

(a) serve a notice on the applicant agreeing to the amended application and confirming that upon payment of the compensation sum the land owner will provide a written receipt; or

(b) serve an amended counter notice on the applicant objecting to the amended application.

(4) An amended counter notice must comply with regulation 8(2), (3) and (4)(a) and, for this purpose —

(a) references in regulation 8(2) and (3) to the application, except for the reference in sub-paragraph (a) of regulation 8(2), are to be treated as references to the amended application; and

(b) an objection may also be made on the ground that the applicant has served the amended application after the expiry of the period for service or has not provided the information required by paragraph (2) of this regulation.

(5) Where the land owner has served an amended counter notice on the applicant, the applicant may, within two months of receipt of the amended counter notice, serve a notice on the land owner agreeing to the amended counter notice.

Lands Tribunal

10.—(1) Where a counter notice has been served, either party may, where there is a dispute relating to any matter other than the value of the premises, request the Lands Tribunal to determine

the matter in dispute by sending a notice of reference to the Lands Tribunal in accordance with the Lands Tribunal Rules 1996(**2**).

(2) The notice of reference must have annexed to it—

(a) the application;

(b) the counter notice; and

(c) if applicable, the amended application and amended counter notice.

Calculation of the compensation sum

11.—(1) Subject to paragraph (2), the compensation sum is to be 2 % of the value of the premises.

(2) Where the premises were in existence on—

(a) 31st December 1905; or

(b) 30th November 1930,

the compensation sum is to be 0.25 % or 0.5 % of the value of the premises respectively.

(3) Where the premises are in residential use and replaced other premises on the same site which were also in residential use ("the former premises"), the compensation sum is to be calculated in accordance with paragraph (2) by reference to the date on which the former premises were in existence.

(4) For the purposes of these Regulations, the value of the premises is to be calculated as at the valuation date on the basis of the open market value of the premises with the benefit of the easement.

(5) In paragraph (4), the "valuation date" means the date as at which the premises are valued for the purposes of the application, being a date no more than 3 months before the date on which the application is served.

Determination of the compensation sum in default of agreement

12.—(1) Where no agreement can be reached on the value of the premises, either party may serve on the other a notice (the "valuation notice") requiring the amount to be determined by a chartered surveyor.

(2) Where a valuation notice has been served, the appointment of a chartered surveyor must be agreed by the parties within one month of the service of the valuation notice and, where agreement on such appointment cannot be reached, either party may request the President of the Royal Institution of Chartered Surveyors to appoint a chartered surveyor.

(3) Where a chartered surveyor has been appointed in accordance with paragraph (2), the following provisions apply as appropriate—

(a) where the appointment has been made by the President of the Royal Institution of Chartered Surveyors, the parties are to be equally liable for the costs of that appointment;

(b) unless the parties agree that the chartered surveyor is to act as an independent expert, the surveyor will act as an arbitrator and the provisions of the Arbitration Act 1996(**3**) apply; and

(c) where the chartered surveyor acts as an independent expert—

(i) the parties will be bound by the chartered surveyor's final decision; and

(ii) each party must bear their own costs and be equally liable for the fees and costs of the chartered surveyor.

(**2**) S.I.1996/1022, amended by S.I. 1997/1965 and 1998/22.
(**3**) 1996 c. 23.