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WELSH STATUTORY INSTRUMENTS

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**2014 No. 2773 (W. 280)**

**TOWN AND COUNTRY PLANNING, WALES**

**The Town and Country Planning (Determination  
of Procedure) (Wales) Order 2014**

*Made - - - - 14 October 2014*

*Coming into force in accordance with article 1(2)*

The Welsh Ministers, in exercise of the powers conferred by section 203(1), (6) and (8) of the Planning Act 2008<sup>(1)</sup>, make the following Order.

In accordance with section 203(9) of that Act a draft of this Order was laid before and approved by a resolution of the National Assembly for Wales.

**Title and commencement**

1.—(1) The title of this Order is The Town and Country Planning (Determination of Procedure) (Wales) Order 2014.

(2) This Order comes into force 28 days after the day on which it is made.

**Determination of procedure**

2.—(1) After section 319A of the Town and Country Planning 1990 Act<sup>(2)</sup> (the title of which becomes “Determination of procedure for certain proceedings: England”) insert—

**“Determination of procedure for certain proceedings: Wales**

**319B.**—(1) The Welsh Ministers must make a determination as to the procedure by which proceedings to which this section applies are to be considered.

(2) A determination under subsection (1) must provide for the proceedings to be considered in such one or more of the following ways as appear to the Welsh Ministers to be appropriate—

- (a) at a local inquiry;
- (b) at a hearing;
- (c) on the basis of representations in writing.

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<sup>(1)</sup> 2008 c. 29.

<sup>(2)</sup> 1990 c. 8. Section 319A was inserted by section 196(1) of the 2008 Act. It was amended by the Growth and Infrastructure Act 2013 (c. 27). Section 196(1) has not been fully commenced.

- (3) The Welsh Ministers must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Welsh Ministers must notify the appellant or applicant (as the case may be) and the local planning authority of any determination made under subsection (1).
- (6) The Welsh Ministers must publish the criteria which are to be applied in making determinations under subsection (1).
- (7) This section applies to—
- (a) an application referred to the Welsh Ministers under section 77;
  - (b) an appeal to the Welsh Ministers under section 78;
  - (c) an appeal to the Welsh Ministers under section 174;
  - (d) an appeal to the Welsh Ministers under section 195; and
  - (e) an appeal to the Welsh Ministers under section 208.
- (8) But this section does not apply to proceedings if they are referred to a Planning Inquiry Commission under section 101; and on proceedings being so referred, any determination made in relation to the proceedings under subsection (1) ceases to have effect.
- (9) The Welsh Ministers may by order amend subsection (7) to—
- (a) add proceedings to, or remove proceedings from, the list of proceedings to which this section applies, or
  - (b) otherwise modify the descriptions of proceedings to which this section applies.
- (10) An order under subsection (9) may—
- (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
  - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.
- (11) No order may be made under subsection (9) unless a draft of the instrument containing the order has been laid before and approved by resolution of the National Assembly for Wales.”
- (2) After section 88D of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>(3)</sup> (the title of which becomes “Determination of procedure for certain proceedings: England”) insert—

**“Determination of procedure for certain proceedings: Wales**

**88E.**—(1) The Welsh Ministers must make a determination as to the procedure by which proceedings to which this section applies are to be considered.

(2) A determination under subsection (1) must provide for the proceedings to be considered in such one or more of the following ways as appear to the Welsh Ministers to be appropriate—

- (a) at a local inquiry;
- (b) at a hearing;
- (c) on the basis of representations in writing.

(3) The Welsh Ministers must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.

(3) 1990 c. 9. Section 88D was inserted by section 196(2) of the 2008 Act. Section 196(2) has not been fully commenced.

(4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.

(5) The Welsh Ministers must notify the appellant or applicant (as the case may be) and the local planning authority of any determination made under subsection (1).

(6) The Welsh Ministers must publish the criteria which are to be applied in making determinations under subsection (1).

(7) This section applies to—

- (a) an application referred to the Welsh Ministers under section 12;
- (b) an appeal to the Welsh Ministers under section 20;
- (c) an appeal to the Welsh Ministers under section 39.

(8) The Welsh Ministers may by order amend subsection (7) to—

- (a) add proceedings under this Act to, or remove proceedings under this Act from, the list of proceedings to which this section applies; or
- (b) otherwise modify the descriptions of proceedings under this Act to which this section applies.

(9) An order under subsection (8) may—

- (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
- (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.

(10) No order may be made under subsection (8) unless a draft of the instrument containing the order has been laid before and approved by resolution of the National Assembly for Wales.”

(3) After section 21A of the Planning (Hazardous Substances) Act 1990(4) insert—

**“Determination by the Welsh Ministers of procedure for certain proceedings**

**21B.**—(1) The Welsh Ministers must make a determination as to the procedure by which proceedings to which this section applies are to be considered.

(2) A determination under subsection (1) must provide for the proceedings to be considered in such one or more of the following ways as appear to the Welsh Ministers to be appropriate—

- (a) at a local inquiry;
- (b) at a hearing;
- (c) on the basis of representations in writing.

(3) The Welsh Ministers must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.

(4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.

(5) The Welsh Ministers must notify the appellant or applicant (as the case may be) and the hazardous substances authority of any determination made under subsection (1).

(6) The Welsh Ministers must publish the criteria which are to be applied in making determinations under subsection (1).

(7) This section applies to—

- (a) an application referred to the Welsh Ministers under section 20;

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(4) 1990 c. 10. Section 21A was inserted by section 196(3) of the 2008 Act. Section 196(3) has not been fully commenced.

- (b) an appeal to the Welsh Ministers under section 21.
- (8) The Welsh Ministers may by order amend subsection (7) to—
  - (a) add proceedings under this Act to, or remove proceedings under this Act from, the list of proceedings to which this section applies; or
  - (b) otherwise modify the descriptions of proceedings under this Act to which this section applies.
- (9) An order under subsection (8) may—
  - (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
  - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.
- (10) No order may be made by the Welsh Ministers under subsection (8) unless a draft of the instrument containing the order has been laid before, and approved by resolution of the National Assembly for Wales.”

### **Consequential Amendments**

- 3. The Schedule (further provisions as to the procedure for certain proceedings) has effect.

14 October 2014

*Carl Sargeant*  
Minister for Natural Resources, one of the Welsh  
Ministers

## SCHEDULE 1

Article 3

### Further provisions as to the procedure for certain proceedings

#### **Town and Country Planning Act 1990**

1. The Town and Country Planning Act 1990 is amended as follows.
2. In section 77 (reference of applications to Secretary of State) before subsection (7) insert—

“(6A) Subsection (5) does not apply to an application referred to the Welsh Ministers under this section instead of being dealt with by a local planning authority in Wales.”
3. In section 78 (right to appeal against planning decisions and failure to take such decisions) in subsection (5)(5) for “and 319A(7)(b)” substitute “, 319A(7)(b) and 319B(7)(b)”.
4. In section 79 (determination of appeals) before subsection (4) insert—

“(3A) Subsection (2) does not apply to an appeal to the Welsh Ministers.”
5. In section 175 (supplementary provisions about appeals against enforcement notices) before subsection (4) insert—

“(3B) Subsection (3) does not apply to an appeal against an enforcement notice issued by a local planning authority in Wales.”
6. In section 195 (appeals against refusal or failure to give decision on application) in subsection (5)(6) after “For the purposes of the application” insert “in relation to England” and after that subsection insert—

“(5A) For the purposes of the application in relation to Wales of sections 288(10)(b) and 319B(7)(d) in relation to an appeal in a case within subsection (1)(b) it shall be assumed that the authority decided to refuse the application in question.”
- 7.—(1) Section 196 (further provisions as to references and appeals to the Secretary of State) is amended as follows.
  - (2) Before subsection (2) insert—

“(1B) Subsection (1) does not apply to an appeal to the Welsh Ministers.”
  - (3) In subsection (2) for “such an appeal” substitute “an appeal under section 195(1)”.
- 8.—(1) Section 208 (appeals against notices under section 207) is amended as follows.
  - (2) Before subsection (6) insert—

“(5B) Subsection (5) does not apply to an appeal to the Welsh Ministers.”
  - (3) In subsection (6) for “such an appeal is brought” substitute “an appeal is brought under subsection (1)”.
9. In section 322 (orders as to costs of parties where no local inquiry held) before subsection (1B)(7) insert—

“(1AA) This section also applies to proceedings under this Act to which section 319B applies.”

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(5) Subsection (5) was amended by section 196(4) of, and paragraphs 1 and 3 of Schedule 10 to, the 2008 Act. Paragraphs 1 and 3 have not been fully commenced. There are other amendments to section 78 which are not relevant to this Order.

(6) Section 195(5) was amended by section 196(4) of, and paragraphs 1 and 7 of Schedule 10 to, the 2008 Act. Paragraph 7 has not been commenced. There are other amendments to section 195 not relevant to this Order.

(7) Subsection (1B) was inserted by section 2(2) of the Growth and Infrastructure Act 2013. There are other amendments to this section not relevant to this Order.

*Status: This is the original version (as it was originally made).*

**10.** In section 322A(8) before subsection (2) insert—

“(1B) This section also applies where—

- (a) arrangements are made for a local inquiry or a hearing to be held pursuant to a determination of the Welsh Ministers under section 319B;
- (b) the inquiry or hearing does not take place; and
- (c) if it had taken place, the Welsh Ministers or a person appointed by the Welsh Ministers would have had power to make an order under section 250(5) of the Local Government Act 1972 requiring any party to pay any costs of any other party.”

**11.**—(1) Section 323 is amended as follows.

(2) Before subsection (2) insert—

“(1B) The Welsh Ministers may by regulations prescribe the procedure to be followed in connection with proceedings under this Act which, pursuant to a determination under section 319B, are to be considered on the basis of representations in writing.”

(3) In subsections (2) and (3) for “The regulations may” (in so far as those words continue to form part of those subsections(9)) substitute “Regulations under this section may”.

**12.** In section 333 (regulations and orders) before subsection (5) insert—

“(4A) The power to make orders under section 319B(9) shall be exercisable by statutory instrument.”

**13.**—(1) Schedule 6 is amended as follows.

(2) In paragraph 2—

(a) before sub-paragraph (6) insert—

“(5A) Sub-paragraph (2) does not apply in the case of an appeal to which section 319B applies.”;

(b) before sub-paragraph (11)(10) insert—

“(10A) Sub-paragraph (9) does not apply to references to the Welsh Ministers in section 319B (determination of procedure for certain proceedings: Wales).”

(3) In paragraph 3—

(a) after sub-paragraph (5)(11) insert—

“(5ZA) Sub-paragraph (4) does not apply in the case of an appeal to which section 319B applies.”;

(b) before sub-paragraph (6)(12) insert—

“(5B) In the case of an appeal to which section 319B applies, the Welsh Ministers must give the appellant, the local planning authority and any person who has made any representations mentioned in sub-paragraph (2) an opportunity to make further representations if the reasons for the direction raise matters with respect to which any of those persons have not made representations.”;

(8) Section 322A was inserted by section 30 of the Planning and Compensation Act 1991 (c. 34). There are other amendments to the section not relevant to this Order.

(9) Section 323(2) and (3) was amended by paragraph 12(3) of Schedule 10 to the 2008 Act. Paragraph 12 has been commenced for certain purposes, see article 3(j) of the Planning Act 2008 (Commencement No 1 and Savings) Order 2009 (S.I. 2008/400).

(10) Paragraph 2(11) was inserted by section 2(7) of the Growth and Infrastructure Act 2013.

(11) Paragraph 3(5) was substituted by section 196(4) of, and paragraphs 1 and 14(1) of Schedule 10 to, the 2008 Act. Paragraph 14 has not been commenced.

(12) There are amendments to sub-paragraph (6) not relevant to this Order.

- (c) in sub-paragraph (6) before “, the Secretary of State” insert “or (5B)”.
- (4) In paragraph 6—
  - (a) before sub-paragraph (2) insert—

“(1B) Sub-paragraph (1) does not apply in the case of an appeal to which section 319B applies; but an appointed person may hold a hearing or local inquiry in connection with such an appeal pursuant to a determination under that section.”;
  - (b) in sub-paragraph (2)(a) after “2(4)” insert “or this paragraph” (in so far as that sub-paragraph does not already include those words<sup>(13)</sup>).

### **Planning (Listed Buildings and Conservation Areas) Act 1990**

- 14. The Planning (Listed Buildings and Conservation Areas) Act 1990 is amended as follows.
- 15. In section 12 (reference of certain applications to Secretary of State) before subsection (5) insert—

“(4B) Subsection (4) does not apply to an application referred to the Welsh Ministers under this section instead of being dealt with by a local planning authority in Wales.”
- 16. In section 20(4) (right of appeal in case of failure to give notice of decision)<sup>(14)</sup> after “For the purposes of the application” insert “in relation to England” and after that subsection insert—

“(5) For the purposes of the application in relation to Wales of sections 22(1), 63(7) (b) and 88E(7)(b) in relation to an appeal under subsection (2) it shall be assumed that the authority decided to refuse the application in question.”
- 17.—(1) Section 22 (determination of appeals under section 20) is amended as follows.
  - (2) Before subsection (3) insert—

“(2B) Subsection (2) does not apply to an appeal to the Welsh Ministers.”
  - (3) In subsection (3) for “the appeal” substitute “an appeal under section 20”.
- 18. In section 40 (supplementary provisions about appeals against listed building enforcement notices) before subsection (3) insert—

“(2B) Subsection (2) does not apply to an appeal against a listed building enforcement notice issued by a local planning authority in Wales.”
- 19. In section 41(4) (determination of appeals: disapplication of section 40(2))—
  - (a) after “If” insert “section 40(2) would otherwise apply and”; and
  - (b) after “subsection (3)” insert “of this section”.
- 20. In section 74(3)<sup>(15)</sup> (application of certain provisions in relation to buildings in conservation areas) before “and 90(2) to (4)” insert “, 88E”.
- 21. In section 89 (application of certain general provisions of TCPA 1990) before subsection (1A)<sup>(16)</sup> insert—

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<sup>(13)</sup> Paragraph 6(2)(a) was amended by paragraph 14(7) of Schedule 10 to the 2008 Act. Paragraph 14(7) has been commenced for certain purposes, see article 3(j) of the Planning Act 2008 (Commencement No 1 and Savings) Order 2009.

<sup>(14)</sup> Section 20(4) was amended by section 196(4) of, and paragraphs 15 and 17 of Schedule 10 to, the 2008 Act. Paragraph 17 has not been commenced.

<sup>(15)</sup> Section 74(3) was amended by section 196(4) of, and paragraphs 15 and 21 of Schedule 10 to, the 2008 Act. Paragraph 21 has not been commenced. There are other amendments to the subsection not relevant to this Order.

<sup>(16)</sup> Subsection (1A) was inserted by article 8 of the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004 (S.I. 2004/3156 (W. 273)).

*Status: This is the original version (as it was originally made).*

“(1ZB) In the application of sections 322, 322A and 323 of that Act, references to section 319B of that Act shall have effect as references to section 88E of this Act.”

**22.** In section 93 (regulations and orders) in subsection (4)(17) before “and 92” insert “, 88E”.

**23.**—(1) Schedule 3 is amended as follows.

(2) In paragraph 2—

(a) before sub-paragraph (5) insert—

“(4B) Sub-paragraph (2) does not apply in the case of an appeal to which section 88E applies.”;

(b) after sub-paragraph (9)(18) insert—

“(10) Sub-paragraph (8) does not apply to references to the Welsh Ministers in section 88E (determination of procedure for certain proceedings: Wales).”

(3) In paragraph 3—

(a) before sub-paragraph (5) insert—

“(4C) Sub-paragraph (4) does not apply in the case of an appeal to which section 88E applies.

(4D) In the case of an appeal to which section 88E applies, the Welsh Ministers must give the appellant, the local planning authority and any person who has made any representations mentioned in sub-paragraph (2) an opportunity to make further representations if the reasons for the direction raise matters with respect to which any of those persons have not made representations.”;

(b) in sub-paragraph (5) before “, the Secretary of State” insert “or (4D)”.

(4) In paragraph 6—

(a) before sub-paragraph (2) insert—

“(1B) Sub-paragraph (1) does not apply in the case of an appeal to which section 88E applies, but an appointed person may hold a hearing or local inquiry in connection with such an appeal pursuant to a determination under that section.”;

(b) in sub-paragraph (2)(a) after “2(4)” insert “or this paragraph”.

### **Planning (Hazardous Substances) Act 1990**

**24.** The Planning (Hazardous Substances) Act 1990 is amended as follows.

**25.** In section 20 (reference of applications to the Secretary of State) before subsection (5) insert—

“(4B) Subsection (4) does not apply to an application referred to the Welsh Ministers under this section instead of being dealt with by a hazardous substances authority in Wales.”

**26.** In section 21 (appeals against decisions or failure to take decisions relating to hazardous substances) before subsection (6) insert—

“(5B) Subsection (5) does not apply to an appeal against a decision of a hazardous substances authority in Wales.”

**27.** In section 25(1) (appeals against hazardous substances contravention notices: supplementary provisions)—

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(17) Subsection (4) was amended by section 196(4) of, and paragraphs 15 and 23 of Schedule 10 to, the 2008 Act. Paragraph 23 has not been commenced. There are other amendments to subsection (4) not relevant to this Order.

(18) Sub-paragraph (9) was inserted by section 196(4) of, and paragraphs 15 and 24(3) of Schedule 10 to, the 2008 Act.



- (a) in paragraph (b)(v)(19) before “of this Act” insert “and section 21B”; and
  - (b) in paragraph (c) for “that Act” substitute “the principal Act”.
- 28.** After section 37 at the end insert—
- “(4) In the application of sections 322, 322A and 323 of that Act by virtue of this section in relation to proceedings in Wales, references to section 319B of that Act shall have effect as references to section 21B of this Act.”
- 29.**—(1) The Schedule is amended as follows.
- (2) In paragraph 2 before sub-paragraph (5) insert—

“(4B) Sub-paragraph (2) does not apply to an appeal to the Welsh Ministers.”
  - (3) After sub-paragraph (9)(20) of that paragraph, insert—

“(10) Sub-paragraph (8) does not apply to references to the Welsh Ministers in section 21B (determination by the Welsh Ministers of procedure for certain proceedings).”
  - (4) In paragraph 3 before sub-paragraph (5) insert—

“(4C) Sub-paragraph (4) does not apply in the case of an appeal to the Welsh Ministers.

(4D) In the case of an appeal to which section 21B applies, the Welsh Ministers must give the appellant, the hazardous substances authority and any person who has made representations mentioned in sub-paragraph (2) an opportunity to make further representations if the reasons for the direction raise matters with respect to which any of those persons have not made representations.”
  - (5) In sub-paragraph (5)(21) of that paragraph before “, the Secretary of State” insert “or (4D)”.
  - (6) In paragraph 6—
    - (a) before sub-paragraph (2) insert—

“(1B) Sub-paragraph (1) does not apply in the case of an appeal to the Welsh Ministers, but an appointed person may hold a hearing or a local inquiry in connection with such an appeal pursuant to a determination under section 21B.”; and
    - (b) in sub-paragraphs (2)(a) and (3)(a) after “2(4)” insert “or this paragraph”.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision in relation to Wales which corresponds to section 196 of and Schedule 10 to the Planning Act 2008 (c. 29). Section 196 made provision for the Secretary of State to determine the procedure for certain proceedings.

Article 2 amends the Town and Country Planning Act 1990 (c. 8), the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9) and the Planning (Hazardous Substances) Act 1990 (c. 10),

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(19) Paragraph (b)(v) was amended by section 196(4) of, and paragraphs 25 and 28 of Schedule 10 to, the 2008 Act. Paragraph 28 has not been commenced.

(20) Sub-paragraph (9) was inserted by section 196(4) of, and paragraphs 25 and 30(1) and (3) of Schedule 10 to, the 2008 Act.

(21) Sub-paragraph (5) was amended by section 196(4) of, and paragraphs 25 and 30 of Schedule 10 to, the 2008 Act.

**Status:** This is the original version (as it was originally made).

in each case so as to require the Welsh Ministers to determine the procedure by which certain proceedings under that Act should be considered.

The procedure can be a local inquiry, a hearing or written representations, or a combination of those three, as the Welsh Ministers consider appropriate. The Welsh Ministers must determine the procedure within the prescribed period, notify the appellant/applicant and local planning authority of which procedure has been selected and publish the criteria that are to be applied in determining the procedure to be followed.

Article 3 and the Schedule make amendments which are consequential on the new provisions inserted by article 2. The amendments in paragraphs 11(3) and 13(4)(b) of the Schedule correspond to paragraphs 12(3) and 14(7) of Schedule 10 to the Planning Act 2008. Those two paragraphs have been commenced in relation to appeals under section 78 of the Town and Country Planning Act 1990 against a decision of a local planning authority and under section 174 of that Act against an enforcement notice.

An impact assessment has been prepared in relation to this instrument. Copies may be obtained from the Planning Division of the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.