
WELSH STATUTORY INSTRUMENTS

2015 No. 1330 (W. 123)

TOWN AND COUNTRY PLANNING, WALES

The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2015

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| <i>Made</i> | - - - - | <i>20 May 2015</i> |
| <i>Laid before the National Assembly for Wales</i> | - - | <i>22 May 2015</i> |
| <i>Coming into force</i> | - - | <i>22 June 2015</i> |

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 55, 65, 69, 71, 78, 78A and 333 of the Town and Country Planning Act 1990(1) (“the 1990 Act”) now exercisable by them(2), and in exercise of the powers conferred on the National Assembly for Wales by section 54 of the Planning and Compulsory Purchase Act 2004(3) (“the 2004 Act”), also now exercisable by them(4), make the following Order:

Title, commencement and application

1.—(1) The title of this Order is the Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2015 and it comes into force on 22 June 2015.

(2) This Order applies to all land in Wales.

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- (1) 1990 c. 8. Section 55(2A) and (2B) was inserted by section 49 of the Planning and Compulsory Purchase Act 2004 (c. 5) (“the 2004 Act”). Section 65 was substituted by section 16(1) of the Planning and Compensation Act 1991 (c. 34) (“the 1991 Act”) and amended by section 40 of, and paragraph 35(2) of the Schedule to, the Agricultural Tenancies Act 1995 (c. 8). Section 69 was substituted by section 118 of, and paragraphs 1 and 3 of Schedule 6 to, the 2004 Act and amended by section 190 of the Planning Act 2008 (c. 29) (“the 2008 Act”) (see section 69(9) for the definition of “prescribed”). Section 71 was amended by section 16(2) and section 32 of, and paragraph 15 of Schedule 7 to, the 1991 Act. Section 78 was amended by section 17(2) of the 1991 Act, section 196(4) of, and paragraphs 1 and 3(a) of Schedule 10 to, the 2008 Act and section 197 of, and paragraphs 1 and 2 of Schedule 11 to, the 2008 Act. Section 78A was inserted by section 50 of the 2004 Act. Sections 49 and 50 of the 2004 Act come into force, to the extent that they are not already in force, on 22 June 2015 by virtue of S.I. 2015/340.
- (2) The functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); see the entry in Schedule 1 for the Town and Country Planning Act 1990 and see section 118(3) of the 2004 Act. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
- (3) 2004 c. 5. Section 54 comes into force, to the extent that it is not already in force, on 22 June 2015 by virtue of S.I. 2015/340.
- (4) The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006.

Amendments to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012

2. The Town and Country Planning (Development Management Procedure) (Wales) Order 2012(5) is amended in accordance with the following provisions.

Interpretation

3. In article 2(1)—

(a) after the definition of “floor space” insert—

““householder application” (“*cais deiliad ty*”) means an application for—

- (a) planning permission for the enlargement, improvement or other alteration of a dwellinghouse, or development within the curtilage of such a dwellinghouse, or
- (b) change of use to enlarge the curtilage of a dwelling house, for any purpose incidental to the enjoyment of the dwellinghouse but does not include—
 - (i) any other application for change of use,
 - (ii) an application for erection of a dwellinghouse, or
 - (iii) an application to change the number of dwellings in a building;”;

(b) after the definition of “mining operations” insert—

““minor commercial application” (“*cais masnachol bach*”) means an application for planning permission for the enlargement, improvement or other alteration of an existing building of no more than 250 square metres gross external floor space at ground floor level, or part of that building, currently in use for any of the purposes set out in Schedule 1A to this Order which is an application for—

- (a) the change of use from any of the purposes set out at paragraph 1 in Schedule 1A to this Order to any of the purposes set out in either paragraph 2 or paragraph 3 of that Schedule;
- (b) the change of use from any of the purposes set out at paragraph 2 in Schedule 1A to this Order to any of the purposes set out in paragraph 3 of that Schedule; or
- (c) the carrying out of building or other operations to a shop front;”.

Amendments relating to certain internal operations

4. After article 2 insert—

“Development to include certain internal operations

2A. Subsection (2) of section 55 of the 1990 Act does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the floor space of the building by more than 200 square metres in circumstances where that the building is used for the retail sale of goods other than hot food.”

Amendments relating to publicity for applications for planning permission

5. In article 12(7)—

- (a) at the end of sub-paragraph (d) omit “and”;
- (b) at the end of sub-paragraph (e) insert—
 - “; and
- (f) that, in the case of a householder application or a minor commercial application, in the event of an appeal that proceeds by way of the expedited procedure, any representations made about the application will be passed to the Welsh Ministers and there will be no opportunity to make further representations.”

Amendments relating to consultations before the grant of permission

- 6. In article 14(4)(b) for both references to “14 days” substitute “21 days”.

Amendments relating to the duty to respond to consultation

- 7. After article 15 insert—

“Duty to respond to consultation

15A.—(1) The requirement to consult which is prescribed for the purposes of section 54(2)(b) of the 2004 Act (duty to respond to consultation) is that contained in article 14.

(2) For the purposes of section 54(4)(a) of the 2004 Act the period prescribed is 21 days beginning with the day on which—

- (a) notice referred to in article 14(4)(a) is given; or
- (b) if earlier, the date of service of a copy of the application on the consultee,

or such other period as may be agreed in writing between the consultee and the consultor.

(3) For the purposes of this article and article 15B, and pursuant to section 54(5)(c) of the 2004 Act, a substantive response is one which—

- (a) states that the consultee has no comment to make;
- (b) states that the consultee has no objection to the proposed development and refers the consultor to current standing advice by the consultee on the subject of the consultation;
- (c) advises the consultor of any concerns identified in relation to the proposed development and how those concerns can be addressed by the applicant; or
- (d) advises that the consultee objects to the proposed development and sets out the reasons for the objection.

Duty to respond to consultation: annual reports

15B.—(1) Each consultee who is, by virtue of section 54 of the 2004 Act and article 15A, under a duty to respond to consultation must give to the Welsh Ministers, not later than 1 July in each year, beginning with the 1 July 2017, a report as to that consultee’s compliance with section 54(4) of the 2004 Act.

(2) The report must relate to the period of 12 months commencing on 1 April in the preceding year (“the report year”).

(3) The report must contain, in respect of any report year, a statement as to—

- (a) the number of occasions on which the consultee was consulted;
- (b) the number of occasions on which a substantive response was provided;

- (c) when the substantive response was provided; and
- (d) the number of occasions on which the consultee gave a substantive response outside the period prescribed for the purposes of section 54(4) of the 2004 Act and a summary of the reasons why.

Amendments relating to appeals

8.—(1) In article 26(1)(b), for the words “paragraph (3)(e)” substitute “paragraph (3)(a)(ii) or (3)(b)(v)”.

(2) In article 26(2)—

- (a) after the words “in paragraph (1) is” omit “ six months from”;
- (b) for sub-paragraphs (a), (b) and (c) substitute—

“(a) in the case of a householder appeal or a minor commercial appeal, twelve weeks from the date of the notice of the decision or determination giving rise to the appeal;

(b) in the case of any other appeal under section 78(1), six months from—

(i) the date of the notice of the decision or determination giving rise to the appeal; or

(ii) in a case in which the local planning authority have served a notice on the applicant in accordance with article 3(2) that they require further information and the applicant has not provided the information, the date of service of that notice;”.

(3) For article 26(3) substitute—

“(3) The documents mentioned in paragraph (1) are—

(a) in the case of a householder appeal or a minor commercial appeal—

(i) a copy of the application which was sent to the local planning authority which has occasioned the appeal;

(ii) any other plans, documents or drawings relating to the application which were not sent to the local planning authority, except any plans, documents or drawings relating to amendments to the application proposed after the local planning authority have made their determination; and

(iii) the notice of the decision or determination;

(b) in the case of any other appeal made under section 78—

(i) the application made to the local planning authority which has occasioned the appeal;

(ii) all plans, drawings and documents sent to the authority in connection with the application;

(iii) all correspondence with the authority relating to the application;

(iv) any certificate provided to the authority under article 11;

(v) any other plans, documents or drawings relating to the application which were not sent to the authority;

(vi) the notice of the decision or determination, if any;

(vii) if the appeal relates to an application for approval of certain matters in accordance with a condition on a planning permission, the application for that permission, the plans submitted with that application and the planning permission granted.”

(4) After article 26(6) insert—

“(7) In this article—

“householder appeal” (“*apêl deiliad tŷ*”) means an appeal under section 78(1)(a) of the 1990 Act in relation to a householder application but does not include—

- (a) an appeal against the grant of any planning permission which is granted subject to conditions; or
- (b) an appeal which is accompanied by an appeal under section 174(6) of the 1990 Act or under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990(7);

“minor commercial appeal” (“*apêl fasnachol fach*”) means an appeal under section 78(1)(a) of the 1990 Act in relation to a minor commercial application but does not include—

- (a) an appeal against the grant of any planning permission which is granted subject to conditions; or
- (b) an appeal which is accompanied by an appeal under section 174 of the 1990 Act or under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990.”

Amendments relating to functions of a local planning authority where an appeal is made

9. After article 26 insert—

“Appeal made: Functions of a local planning authority

26A. The additional period prescribed for the purposes of section 78A is four weeks.”

Amendments relating to the register of applications and local development orders

10. In article 29(15)(a)—

- (a) omit the words “(or the appropriate period allowed under article 22 has expired without their giving a decision)”;
- (b) omit the words “of six months”.

Amendments to the Schedules

11.—(1) In the Acknowledgement of Application in Schedule 1, the words “If you appeal, you must appeal within 6 months” to “(“the relevant date”)].....” are omitted.

(2) After Schedule 1 insert Schedule 1A contained in the Schedule to this Order.

(3) In Schedule 2—

- (a) in the Notice Under Article 10 of Application for Planning Permission before the definition of “owner” insert—

“In the event that an appeal is made against a decision of the Local Planning Authority to refuse to grant planning permission for the proposed development, and that appeal then proceeds by way of the expedited written procedure prescribed in Part 1 of the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2015 (S.I.....(W.)),

(6) Section 174 was amended by the 1991 Act, section 63 of, and Schedule 17 to, the Enterprise and Regulatory Reform Act 2013 (c. 24) and S.I. 2004/3156 (W. 273).

(7) 1990 c. 9. Section 20 was amended by S.I. 2014/2773 (W. 280).

any representations made by the owner or tenant to the Local Planning Authority about this application will be passed to the Welsh Ministers and there will be no opportunity to make further representations. Any owner or tenant wishing to make representations should do so by the date in paragraph (f) above.”

- (b) in the Notice of Appeal under Articles 10 and 25 before the definition of “owner” insert—
- “In the event that an appeal is dealt with by the expedited written representation procedure prescribed in Part 1 of the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2015 (S.I.....(W.)), any representations made by the owner or tenant to the local Planning Authority about the application will be passed to the Welsh Ministers and there will be no opportunity to make further representations in relation to the appeal.”

Transitional and savings provisions

12.—(1) The provisions in articles 8 and 11(3)(b) of this Order, do not apply in relation to any appeal under section 78 of the Town and Country Planning Act 1990 relating to an application made before this Order comes into force.

(2) The provision in articles 3, 5, 10 and 11(1), (2) and (3)(a) of this Order, do not apply in relation to an application for planning permission made before this Order comes into force.

(3) The Town and Country Planning (Development Management Procedure) (Wales) Order 2012, in the form which it existed immediately before the coming into force of this Order, continues to apply to any application for planning permission made before this Order comes into force and to any appeal made under section 78 relating to such an application.

20 May 2015

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

SCHEDULE

Article 3

“SCHEDULE 1A

Article 2(1)

Minor Commercial Development Uses

Shops

1. Use for all or any of the following purposes—
 - (a) for the retail sale of goods other than hot food,
 - (b) as a post office,
 - (c) for the sale of tickets or as a travel agency,
 - (d) for the sale of sandwiches or other cold food for consumption off the premises,
 - (e) for hairdressing,
 - (f) for the direction of funerals,
 - (g) for the display of goods for sale,
 - (h) for the hiring out of domestic or personal goods or articles,
 - (i) for the washing or cleaning of clothes or fabrics on the premises,
 - (j) for the reception of goods to be washed, cleaned or repaired,

where the sale, display or service is to visiting members of the public.

Financial and professional services

2. Use for the provision of—
 - (a) financial services,
 - (b) professional services (other than health or medical services), or
 - (c) any other services (including use as a betting office) which it is appropriate to provide in a shopping area,

where the services are provided principally to visiting members of the public.

Food and drink

3. Use for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (“the Order”).

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Article 3 amends article 2 of the Order (interpretation) by inserting definitions of the terms “householder application” and “minor commercial application”.

Article 4 inserts a provision into the Order which has the effect of bringing internal operations of a certain size and description within planning control.

Article 5 amends article 12 of the Order (publicity for applications for planning permission) by inserting provision which ensures that where the local planning authority maintain a website for the purpose of publicising applications for planning permission, information is published stating that in the event of an appeal relating to a householder application or a minor commercial application, the representations that are made at the application stage will be passed to the Welsh Ministers and there will be no opportunity to make further representations.

Article 6 amends article 14(4)(b) of the Order by extending the minimum period which must elapse before a determination is made on a planning application from 14 days to 21 days.

Article 7 inserts provisions into the Order prescribing the consultation requirement that will attract the duty to respond to consultation imposed by section 54 of the Planning and Compulsory Purchase Act 2004.

The timeframe within which a substantive response must be provided, the information that must be included in the response and provision imposing a duty to report on compliance with the requirements is also prescribed in article 7.

Article 8 amends article 26 of the Order (appeals). A twelve week time limit to lodge a householder appeal or a minor commercial appeal is introduced and the six month time limit for lodging an appeal against the non determination of an application for planning permission is removed. In addition, the documentation that is required to be served with a householder appeal or minor commercial appeal is prescribed and the terms “householder appeal” and “minor commercial appeal” are defined.

Article 9 inserts new provision into the Order which prescribes an additional period of four weeks for the purposes of section 78A of the Town and Country Planning Act 1990.

Section 78A was inserted by section 50(1) of the Planning and Compulsory Purchase Act 2004. It provides that the local planning authority may determine an application for planning permission during the additional period even though an appeal has been made to the Welsh Ministers.

Article 10 amends the definition of an application for planning permission that can be treated as finally disposed of for the purposes of article 29 (register of applications and local development orders) of the Order. These changes reflect the changes made to the Order which remove the time limit for lodging non determination appeals.

Article 11 makes amendments to various notices in the Schedules to the Order. The amendments make clear that in the event that an appeal proceeds by way of the new expedited procedure, any representations made at the application stage will be passed to the Welsh Ministers and there will be no opportunity to make further representations.

Article 12 sets out the transitional and savings provisions.

The amendments made by articles 3, 5 and 11 of this Order and the amendments made by article 8 which relate to householder appeals and minor commercial appeals are part of a package of subordinate legislation introducing an expedited written representations procedure for such appeals.

The expedited written representations procedure for householder appeals and minor commercial appeals is introduced by the Town and Country Planning (Referrals and Appeals) (Written Representation Procedure) (Wales) Regulations 2015.

Similar amendments to those in articles 8 and 9 removing the time limit for lodging appeals against non determination of applications and prescribing the additional period of four weeks for the purposes of section 20A of the Planning (Listed Buildings and Conservation Areas) Act 1990 are being made to the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012.

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The Regulatory Impact Assessment applicable to this Order is obtainable from the Welsh Government at: Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government website at www.wales.gov.uk.