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WELSH STATUTORY
INSTRUMENTS

2018 Rhif 1181 (Cy. 240)

2018 No. 1181 (W. 240)

Y DIWYDIANT DŴR, CYMRU

WATER INDUSTRY, WALES

**Rheoliadau Draenio Cynaliadwy
(Apelau) (Cymru) 2018**

**The Sustainable Drainage (Appeals)
(Wales) Regulations 2018**

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn darparu hawl i apelio i Weinidogion Cymru yn erbyn penderfyniad corff cymeradwyo o dan Atodlen 3 i Ddeddf Rheoli Llifogydd a Dŵr 2010 (p. 29) mewn perthynas â cheisiadau am gymeradwyaeth neu mewn perthynas â'r ddyletswydd i fabwysiadu mewn cysylltiad â systemau draenio cynaliadwy.

Mae rheoliad 3(1) yn darparu hawl i apelio i Weinidogion Cymru yn erbyn penderfyniad. Mae rheoliad 3(2) yn darparu, at ddibenion rheoliad 3(1), bod penderfyniad yn cynnwys gwrthodiad tybiedig o gais am gymeradwyaeth neu archiad i fabwysiadu.

Mae rheoliad 4 yn disgrifio effaith cyflwyno apêl.

Mae rheoliad 5 yn darparu ar gyfer terfynau amser ar gyfer cyflwyno apêl mewn perthynas ag apelau yn erbyn gwahanol fathau o benderfyniadau gan y corff cymeradwyo.

Mae rheoliad 6 yn darparu ar gyfer cynnwys hysbysiad apêl yn erbyn penderfyniad, a gofynion ar gyfer cyflwyno'r hysbysiad, gan gynnwys dogfennau cysylltiedig.

Mae rheoliadau 7 ac 8 yn darparu ar gyfer y defnydd o gyfathrebiadau electronig at ddibenion apêl, ac ar gyfer tynnu'n ôl gytundeb i ddefnyddio cyfathrebiadau electronig.

Mae rheoliad 9 yn darparu ar gyfer y weithdrefn i'w dilyn gan Weinidogion Cymru wrth benderfynu ar apêl.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for a right of appeal to the Welsh Ministers against a decision of an approving body under Schedule 3 to the Flood and Water Management Act 2010 (c. 29) in relation to applications for approval or in relation to the duty to adopt with respect to sustainable drainage systems.

Regulation 3(1) provides for a right of appeal to the Welsh Ministers against a decision. Regulation 3(2) provides that for the purposes of regulation 3(1), a decision includes a deemed refusal of an application for approval or request to adopt.

Regulation 4 describes the effect of bringing an appeal.

Regulation 5 provides for time limits for bringing an appeal in relation to appeals against different types of decision by the approving body.

Regulation 6 provides for the contents of a notice of appeal against a decision, and requirements for service of the notice, including accompanying documents.

Regulations 7 and 8 provide for the use of electronic communications for purposes of an appeal, and for withdrawal of agreement to the use of electronic communications.

Regulation 9 provides for the procedure to be followed by the Welsh Ministers in determining an appeal.

Mae rheoliad 10 yn darparu mai Gweinidogion Cymru fydd i benderfynu ar apêl o dan y Rheoliadau hyn ac yn darparu ar gyfer penodi person (y “person penodedig”) i adrodd i Weinidogion Cymru.

Mae rheoliad 11 yn darparu ar gyfer y pwerau sydd gan Weinidogion Cymru wrth benderfynu ar apêl.

Mae rheoliad 12 yn darparu ar gyfer y dyletswyddau penodol y mae Gweinidogion Cymru yn ddarostyngedig iddynt wrth benderfynu ar apêl.

Mae rheoliad 13 yn darparu ar gyfer tystiolaeth a dosrannu costau mewn apelau o dan y Rheoliadau hyn.

Lluniwyd asesiad effaith rheoleiddiol, o ran Cymru, o’r costau a’r manteision sy’n debygol o ddeillio o gydymffurfio â’r Rheoliadau hyn. Gellir cael copi oddi wrth Lywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ ac mae wedi ei gyhoeddi ar www.llyw.cymru.

Regulation 10 provides that the Welsh Ministers are to determine an appeal under these Regulations, and for the appointment of a person (the “appointed person”) to report to the Welsh Ministers.

Regulation 11 provides for the powers available to the Welsh Ministers when determining an appeal.

Regulation 12 provides for the specific duties to which Welsh Ministers are subject when determining an appeal.

Regulation 13 provides for evidence and apportionment of costs in appeals under these Regulations.

A regulatory impact assessment in relation to Wales has been prepared on the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.wales.

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WATER INDUSTRY, WALES

**Rheoliadau Draenio Cynaliadwy
(Apelau) (Cymru) 2018**

**The Sustainable Drainage (Appeals)
(Wales) Regulations 2018**

Gwnaed 13 Tachwedd 2018

Made 13 November 2018

Yn dod i rym 7 Ionawr 2019

Coming into force 7 January 2019

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir gan adrannau 32 a 48(2) o Ddeddf Rheoli Llifogydd a Dŵr 2010(1) a pharagraffau 4(a) a 25 o Atodlen 3 iddi, yn gwneud y Rheoliadau a ganlyn.

The Welsh Ministers in exercise of the powers conferred by sections 32 and 48(2) of, and paragraphs 4(a) and 25 of Schedule 3 to, the Flood and Water Management Act 2010(1), make the following Regulations.

Yn unol â pharagraff 25(3)(b) o Atodlen 3 i'r Ddeddf honno, gosodwyd drafft o'r Offeryn hwn gerbron Cynulliad Cenedlaethol Cymru ac fe'i cymeradwywyd ganddo drwy benderfyniad.

In accordance with paragraph 25(3)(b) of Schedule 3 to that Act a draft of this instrument has been laid before and approved by, a resolution of the National Assembly for Wales.

RHAN 1

PART 1

Rhagarweiniad

Introduction

Enwi a chychwyn

Title and commencement

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Draenio Cynaliadwy (Apelau) (Cymru) 2018.

1.—(1) The title of these Regulations is the Sustainable Drainage (Appeals) (Wales) Regulations 2018.

(2) Daw'r Rheoliadau hyn i rym ar 7 Ionawr 2019.

(2) These Regulations come into force on 7 January 2019.

(1) 2010 p. 29. Diwygiwyd Atodlen 3 gan adrannau 21(3), 88(a) ac 88(b) o Ddeddf Dŵr 2014 (p. 21) ac O.S. 2012/1659 a 2013/755 (Cy. 90).

(1) 2010 c. 29. Schedule 3 was amended by sections 21(3), 88(a) and 88(b) of the Water Act 2014 (c. 21) and S.I. 2012/1659 and 2013/755 (W. 90).

Dehongli

2.—(1) Yn y Rheoliadau hyn—

ystyr “apelydd” (“*appellant*”) yw datblygwr sy’n gwneud apêl yn erbyn penderfyniad o dan y Rheoliadau hyn;

ystyr “archiad i fabwysiadu” (“*request to adopt*”) yw archiad yn unol â pharagraff 23(2)(b) o Atodlen 3;

ystyr “Atodlen 3” (“*Schedule 3*”) yw Atodlen 3 i Ddeddf Rheoli Llifogydd a Dŵr 2010;

ystyr “awdurdod cynllunio” (“*planning authority*”) yw’r awdurdod sy’n penderfynu ar gais am ganiatâd cynllunio;

ystyr “cais am gymeradwyaeth” (“*application for approval*”) yw—

(a) cais am gymeradwyaeth o dan baragraff 9 o Atodlen 3, neu

(b) y rhan honno o gais o dan baragraff 10 o Atodlen 3 sy’n ceisio cymeradwyaeth;

mae i “cyfathrebiad electronig” yr ystyr a roddir i “electronic communication” yn adran 15(1) o Ddeddf Cyfathrebiadau Electronig 2000(1);

ystyr “cymeradwyaeth” (“*approval*”) yw’r gymeradwyaeth sy’n ofynnol o dan baragraff 7(1) o Atodlen 3;

ystyr “datblygwr” (“*developer*”) yw—

(a) mewn perthynas â chais am gymeradwyaeth, y person a wnaeth gais am gymeradwyaeth;

(b) mewn perthynas ag archiad i fabwysiadu, y person a wnaeth archiad yn unol â pharagraff 23(2)(b) o Atodlen 3;

ystyr “Deddf 1990” (“*the 1990 Act*”) yw Deddf Cynllunio Gwlad a Thref 1990(2);

ystyr “hysbysiad apêl” (“*notice of appeal*”) yw hysbysiad sy’n cydymffurfio â rheoliad 6(1);

ystyr “penderfyniad” (“*decision*”) yw penderfyniad corff cymeradwyo(3) ynghylch—

(a) cais am gymeradwyaeth (gan gynnwys penderfyniad ynghylch amodau), neu

(b) y ddyletswydd i fabwysiadu.

Interpretation

2.—(1) In these Regulations—

“the 1990 Act” (“*Deddf 1990*”) means the Town and Country Planning Act 1990(1);

“appellant” (“*apelydd*”) means a developer who makes an appeal against a decision under these Regulations;

“application for approval” (“*cais am gymeradwyaeth*”) means—

(a) an application for approval under paragraph 9 of Schedule 3, or

(b) that part of an application under paragraph 10 of Schedule 3 that seeks approval;

“approval” (“*cymeradwyaeth*”) means the approval required under paragraph 7(1) of Schedule 3;

“decision” (“*penderfyniad*”) means a decision of an approving body(2) about—

(a) an application for approval (including a decision about conditions), or

(b) the duty to adopt;

“developer” (“*datblygwr*”) means—

(a) in relation to an application for approval, the person who applied for approval;

(b) in relation to a request to adopt, the person who made a request pursuant to paragraph 23(2)(b) of Schedule 3;

“electronic communication” (“*cyfathrebiad electronig*”) has the meaning given in section 15(1) of the Electronic Communications Act 2000(3);

“notice of appeal” (“*hysbysiad apêl*”) means a notice that complies with regulation 6(1);

“planning authority” (“*awdurdod cynllunio*”) means the authority which determines an application for planning permission;

“request to adopt” (“*archiad i fabwysiadu*”) means a request pursuant to paragraph 23(2)(b) of Schedule 3;

“Schedule 3” (“*Atodlen 3*”) means Schedule 3 to the Flood and Water Management Act 2010.

(1) 2000 p. 7. Diwygiwyd adran 15(1) gan baragraff 158 o Atodlen 17 i Ddeddf Cyfathrebiadau 2003 (p. 21).

(2) 1990 p. 8.

(3) Diffinnir “approving body” ym mharagraff 6 o Atodlen 3.

(1) 1990 c. 8.

(2) “Approving body” is defined in paragraph 6 of Schedule 3.

(3) 2000 c. 7. Section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

(2) Yn y Rheoliadau hyn mae cyfeiriad at “gwaith adeiladu”(1) i’w ddehongli fel cyfeiriad at waith adeiladu sydd â goblygiadau draenio(2).

(2) In these Regulations a reference to “construction work”(1) is to be construed as a reference to construction work having drainage implications(2).

RHAN 2

Apelau yn erbyn penderfyniadau

Apelau i Weinidogion Cymru

3.—(1) Caiff datblygwr apelio yn erbyn penderfyniad drwy gyflwyno hysbysiad i Weinidogion Cymru.

(2) Rhaid cyflwyno apelau yn unol â’r Rhan hon.

(3) At ddibenion paragraff (1) mae “penderfyniad” yn cynnwys gwrthodiad tybiedig—

- (a) o gais am gymeradwyaeth, neu
- (b) o archiad i fabwysiadu.

(4) Mae i “gwrthodiad tybiedig”—

- (a) mewn perthynas â chais am gymeradwyaeth, yr ystyr a roddir yn rheoliad 5(a)(ii);
- (b) mewn perthynas ag archiad i fabwysiadu, yr ystyr a roddir yn rheoliad 5(b)(ii).

Effaith apêl

4.—(1) Nid yw apêl yn erbyn penderfyniad yn cael yr effaith o ohirio’r penderfyniad.

(2) Os yw apelydd yn apelio yn erbyn penderfyniad ynghylch gosod amod cymeradwyo, ni chaniateir cychwyn gwaith adeiladu neu barhau â gwaith adeiladu nes bod yr apêl wedi ei phenderfynu neu ei thynnu yn ôl.

Terfyn amser ar gyfer gwneud apêl

5. Rhaid gwneud apêl o fewn y cyfnod o 6 mis sy’n dechrau—

- (a) ar gyfer apêl yn erbyn penderfyniad ynghylch cais am gymeradwyaeth (ac eithrio penderfyniad ynghylch amod)—
 - (i) ar ddyddiad y penderfyniad, neu

PART 2

Appeals against decisions

Appeals to the Welsh Ministers

3.—(1) A developer may appeal against a decision by notice to the Welsh Ministers.

(2) Appeals must be made in accordance with this Part.

(3) For the purposes of paragraph (1) “decision” includes a deemed refusal of—

- (a) an application for approval, or
- (b) a request to adopt.

(4) “deemed refusal”—

- (a) in relation to an application for approval, has the meaning in regulation 5(a)(ii);
- (b) in relation to a request to adopt, has the meaning in regulation 5(b)(ii).

Effect of appeal

4.—(1) An appeal against a decision does not have the effect of suspending the decision.

(2) If an appellant appeals a decision about the imposition of a condition of approval, construction work must not be commenced or continued until the appeal is determined or withdrawn.

Time limit for making an appeal

5. An appeal must be made within the period of 6 months beginning with—

- (a) for an appeal against a decision about an application for approval (other than a decision about a condition)—
 - (i) the date of the decision, or

(1) Diffinnir “construction work” ym mharagraff 7(2)(a) o Atodlen 3.

(2) Diffinnir “drainage implications” ym mharagraff 7(2)(b) o Atodlen 3.

(1) “Construction work” is defined in paragraph 7(2)(a) of Schedule 3.

(2) “Drainage implications” is defined in paragraph 7(2)(b) of Schedule 3.

- (ii) os yw'r apêl yn erbyn gwrthodiad tybiedig y cais sy'n deillio o fethiant y corff cymeradwyo i benderfynu ar y cais o fewn cyfnod a ragnodir at ddiben paragraff 11(5) o Atodlen 3, ar ddiwrnod olaf y cyfnod hwnnw;
- (b) ar gyfer apêl yn erbyn penderfyniad ynghylch archiad i fabwysiadu—
 - (i) ar ddyddiad y penderfyniad, neu
 - (ii) os yw'r apêl yn erbyn gwrthodiad tybiedig yr archiad sy'n deillio o fethiant y corff cymeradwyo i benderfynu ar yr archiad o fewn y cyfnod a ragnodir at ddiben paragraff 23(4)(a) o Atodlen 3, ar ddiwrnod olaf y cyfnod hwnnw;
- (c) ar gyfer apêl yn erbyn amod cymeradwyo (gan gynnwys amod sy'n pennu bond methu â chyflawni), ar y dyddiad y rhoddir cymeradwyaeth.

Gwneud apêl

6.—(1) Rhaid i hysbysiad apêl—

- (a) bod yn ysgrifenedig, ar ffurflen a gafwyd oddi wrth Weinidogion Cymru,
- (b) datgan seiliau'r apêl,
- (c) datgan y ffeithiau y bydd yr apelydd yn dibynnu arnynt i ategu pob un o'r seiliau hynny ac unrhyw fanylion eraill am yr achos y mae'r apelydd yn bwriadu eu cyflwyno mewn perthynas â'r apêl, a
- (d) cynnwys enw, cyfeiriad (gan gynnwys unrhyw gyfeiriad e-bost) a rhif ffôn yr apelydd ac unrhyw asiant sy'n gweithredu ar ran yr apelydd.

(2) Rhaid anfon yr hysbysiad at Weinidogion Cymru gyda'r canlynol—

- (a) datganiad o ran pa un a yw'r apelydd yn dymuno i'r apêl gael ei hymdrin drwy sylwadau ysgrifenedig, gwrandawriad neu ymchwiliad, a
- (b) copi o ba un bynnag o'r canlynol sy'n berthnasol—
 - (i) y cais am gymeradwyaeth ac unrhyw blân neu wybodaeth arall a oedd yn mynd gyda'r cais;
 - (ii) yr archiad i fabwysiadu;
 - (iii) yr hysbysiad am y penderfyniad;
 - (iv) unrhyw dystysgrif a ddyroddwyd o dan baragraff 12(2) o Atodlen 3;

- (ii) if the appeal is against the deemed refusal of the application arising from the failure of the approving body to determine the application within a period prescribed for the purpose of paragraph 11(5) of Schedule 3, the last day of that period;

- (b) for an appeal against a decision about a request to adopt—
 - (i) the date of the decision, or
 - (ii) if the appeal is against the deemed refusal of the request arising from the failure of the approving body to determine the request within the period prescribed for the purpose of paragraph 23(4)(a) of Schedule 3, the last day of that period;
- (c) for an appeal against a condition of approval (including a condition specifying a non-performance bond), the date approval is granted.

Making an appeal

6.—(1) Notice of an appeal must—

- (a) be in writing, on a form obtained from the Welsh Ministers,
- (b) state the grounds of appeal,
- (c) state the facts on which the appellant will rely in support of each of those grounds and any other particulars of the case the appellant intends to put forward in relation to the appeal, and
- (d) include the name, address (including any email address) and telephone number of the appellant and any agent acting for the appellant.

(2) The notice must be sent to the Welsh Ministers accompanied by—

- (a) a statement as to whether the appellant wishes to have the appeal dealt with by way of written representations, a hearing or an inquiry, and
- (b) a copy of whichever of the following are relevant—
 - (i) the application for approval and any plan or other information that accompanied the application;
 - (ii) the request to adopt;
 - (iii) the notification of the decision;
 - (iv) any certificate issued under paragraph 12(2) of Schedule 3;

- (v) unrhyw ohebiaeth rhwng yr apelydd a'r corff cymeradwyo neu'r awdurdod cynllunio mewn perthynas â'r cais, yr archiad neu'r dystysgrif.

(3) Rhaid i apelydd sy'n anfon hysbysiad apêl at Weinidogion Cymru, ar yr un pryd, anfon copi o'r hysbysiad apêl a'r dogfennau cysylltiedig i'r corff cymeradwyo.

(4) Caiff unrhyw hysbysiad neu ddogfen y mae'n ofynnol yn y rheoliad hwn ei anfon neu ei hanfon, neu ei ddarparu neu ei darparu, gael ei anfon neu ei hanfon drwy'r post neu gyfathrebiad electronig.

(5) Yn y rheoliad hwn, ystyr "dogfennau cysylltiedig" yw'r dogfennau perthnasol ym mharagraff (2)(b).

Defnyddio cyfathrebiadau electronig

7.—(1) Mae paragraffau (2) i (6) o'r rheoliad hwn yn gymwys pan fo cyfathrebiad electronig yn cael ei ddefnyddio gan apelydd at ddiben cyflawni unrhyw ofyniad yn rheoliad 6 er mwyn anfon unrhyw hysbysiad neu ddogfen arall at unrhyw berson arall ("y derbyniwr").

(2) Ystyrir bod y gofyniad wedi ei gyflawni pan fo'r hysbysiad neu unrhyw ddogfen arall a drosglwyddir drwy gyfrwng y cyfathrebiad electronig—

- (a) yn un y gall y derbynydd gael mynediad iddo neu iddi,
- (b) yn ddarllenadwy ym mhob modd perthnasol, ac
- (c) yn ddigon parhaol fel bod modd cyfeirio ato neu ati yn nes ymlaen.

(3) Ym mharagraff (2), ystyr "yn ddarllenadwy ym mhob modd perthnasol" yw bod yr wybodaeth a gynhwysir yn yr hysbysiad neu mewn unrhyw ddogfen arall ar gael i'r derbynydd i'r un graddau o leiaf â phe bai'r wybodaeth wedi ei hanfon neu ei rhoi drwy gyfrwng dogfen ar ffurf brintiedig.

(4) Pan fo'r derbynydd yn cael y cyfathrebiad electronig y tu allan i oriau busnes y derbynydd, ystyrir ei fod wedi ei gael ar y diwrnod gwaith nesaf.

(5) Mae gofyniad yn rheoliad 6 y dylai unrhyw hysbysiad neu ddogfen arall fod yn ysgrifenedig wedi ei gyflawni pan fo'r ddogfen honno'n bodloni'r meini prawf ym mharagraff (2), ac mae "yn ysgrifenedig" ac ymadroddion cytras i'w dehongli yn unol â hynny.

(6) Pan fo apelydd yn anfon unrhyw hysbysiad neu ddogfen arall at Weinidogion Cymru drwy ddefnyddio cyfathrebiadau electronig, cymerir eu bod wedi cytuno—

- (v) any correspondence between the appellant and the approving body or planning authority in relation to the application, request or certificate.

(3) An appellant who sends a notice of appeal to the Welsh Ministers must, at the same time, send a copy of the notice of appeal and accompanying documents to the approving body.

(4) Any notice or other document required in this regulation to be sent or provided, may be sent by post or electronic communication.

(5) In this regulation "accompanying documents" means the relevant documents in paragraph (2)(b).

Use of electronic communication

7.—(1) Paragraphs (2) to (6) of this regulation apply where an electronic communication is used by an appellant for the purpose of fulfilling any requirement in regulation 6 to give or send any notice or other document to any other person ("the recipient").

(2) The requirement is 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.

(3) In paragraph (2) "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.

(4) 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.

(5) A requirement in regulation 6 that any notice or other document should be in writing is fulfilled where that document meets the criteria in paragraph (2) and "written" and cognate expressions are to be construed accordingly.

(6) Where an appellant sends any notice or other document to the Welsh Ministers using electronic communications they will be taken to have agreed—

- (a) i ddefnyddio'r cyfathrebiadau hynny at yr holl ddibenion sy'n ymwneud â'r apêl y mae modd eu cyflawni drwy gyfrwng electronig,
- (b) mai cyfeiriad yr apelydd at ddiben cyfathrebiadau o'r fath yw'r cyfeiriad sydd wedi ei ymgorffori yn yr hysbysiad neu ddogfen arall, neu sydd fel arall wedi ei gysylltu yn rhesymegol â hwy, ac
- (c) y bydd cytundeb tybiedig yr apelydd o dan y paragraff hwn yn parhau hyd nes iddo hysbysu ei fod yn dymuno dirymu'r cytundeb yn unol â rheoliad 8.

- (a) to the use of such communications for all purposes 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 notice or other document, and
- (c) that the appellant's deemed agreement under this paragraph will subsist until the appellant gives notice in accordance with regulation 8, of a wish to revoke the agreement.

Tynnu cydsyniad i ddefnyddio cyfathrebiadau electronig yn ôl

8. Pan na fo'r apelydd bellach yn fodlon derbyn y defnydd o gyfathrebiadau electronig at unrhyw ddiben o'r Rheoliadau hyn y gellir ei gyflawni yn electronig, rhaid i'r person rhoi hysbysiad ysgrifenedig sydd—

- (a) yn tynnu'n ôl unrhyw gyfeiriad yr hysbyswyd Gweinidogion Cymru neu gorff cymeradwyo amdano at y diben hwnnw, neu
- (b) yn dirymu unrhyw gytundeb a wnaed â Gweinidogion Cymru neu gyda chorff cymeradwyo at y diben hwnnw.

Withdrawal of consent to the use of electronic communication

8. Where the appellant is no longer willing to accept the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically, the appellant must give notice in writing—

- (a) withdrawing any address notified to the Welsh Ministers or to an approving body for that purpose, or
- (b) revoking any agreement entered into with the Welsh Ministers or with an approving body for that purpose.

RHAN 3

Gweithdrefn ar gyfer penderfynu ar apêl

Y weithdrefn ar gyfer apelau

9.—(1) Mae paragraffau (2) i (5) o'r rheoliad hwn yn gymwys pan fo Gweinidogion Cymru wedi cael hysbysiad apêl dilys.

(2) Mae adran 319B(1) (pennu'r weithdrefn ar gyfer achosion penodol: Cymru) o Ddeddf 1990 a Rheoliadau Cynllunio Gwlad a Thref (Ceisiadau Atgyfeiriedig a Gweithdrefn Apelau) (Cymru) 2017 (2) ("Rheoliadau 2017") yn gymwys gyda'r addasiadau a ddisgrifir ym mharagraff (3) i apêl o dan y Rheoliadau hyn fel pe bai'n apêl o dan adran 78 (hawl i apelio yn erbyn penderfyniadau cynllunio a methiant i wneud penderfyniadau o'r fath) o Ddeddf 1990.

PART 3

Procedure for determining an appeal

Procedure for appeals

9.—(1) Paragraphs (2) to (5) of this regulation apply where the Welsh Ministers are in receipt of a valid notice of appeal.

(2) Section 319B(1) (determination of procedure for certain proceedings: Wales) of the 1990 Act and the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017(2) ("the 2017 Regulations") apply with the modifications described in paragraph (3) to an appeal under these Regulations as if it were an appeal under section 78 (right to appeal against planning decisions and failure to take such decisions) of the 1990 Act.

(1) Mewnosodwyd adran 319B gan O.S. 2014/2773 (Cy. 280).
 (2) O.S. 2017/544 (Cy. 121).

(1) Section 319B was inserted by S.I. 2014/2773 (W. 280).
 (2) S.I. 2017/544 (W. 121).

(3) Mae'r addasiadau fel a ganlyn—

- (a) mae unrhyw gyfeiriad at apêl o dan adran 78 o Ddeddf 1990 i'w ddarllen fel cyfeiriad at apêl yn erbyn penderfyniad o dan y Rheoliadau hyn;
- (b) mae gan unrhyw gyfeiriad at "apelydd" yr ystyr a roddir yn rheoliad 2(1);
- (c) ystyr unrhyw gyfeiriad at "person penodedig" yw person a bennwyd i adrodd i Weinidogion Cymru;
- (d) mae unrhyw gyfeiriad at berson â buddiant i'w ddarllen fel cyfeiriad at yr ymgynghorwyr a bennir ym mharagraff 11(3) o Atodlen 3;
- (e) mae unrhyw gyfeiriad at yr awdurdod cynllunio lleol i'w ddarllen fel cyfeiriad at y corff cymeradwyo;
- (f) mae unrhyw gyfeiriad at "datganiad achos" yn gyfeiriad at y datganiad yn rheoliad 6(1)(c);
- (g) rhaid i'r dogfennau sy'n gysylltiedig â'r holiadur a ddarperir gan gorff cymeradwyo yn unol â rheoliad 16 o Reoliadau 2017, pan fo'n berthnasol, gynnwys copi o—
 - (i) unrhyw ohebiaeth rhwng y corff cymeradwyo â'r ymgynghorwyr y cyfeirir atynt yn is-baragraff (d);
 - (ii) unrhyw ohebiaeth rhwng y corff cymeradwyo a'r awdurdod cynllunio lleol;
 - (iii) unrhyw ohebiaeth rhwng y corff cymeradwyo a'r apelydd mewn perthynas â'r cais, yr archiad neu'r dystysgrif nas cyflwynwyd gyda'r dogfennau sy'n gysylltiedig â'r hysbysiad apêl.

(4) Yn y rheoliad hwn, ystyr "hysbysiad apêl dilys" yw hysbysiad apêl—

- (a) sy'n cydymffurfio â gofynion rheoliad 6(1),
- (b) a anfonir at Weinidogion Cymru—
 - (i) yn unol â rheoliad 6(2),
 - (ii) o fewn y cyfnod perthnasol a bennir yn rheoliad 5, ac
- (c) y mae'r apelydd yn ardystio mewn perthynas ag ef fod copi wedi cael ei anfon i'r corff cymeradwyo yn unol â rheoliad 6(3).

(3) The modifications are—

- (a) any reference to an appeal under section 78 of the 1990 Act is to be read as a reference to an appeal against a decision under these Regulations;
- (b) any reference to an "appellant" has the meaning given in regulation 2(1);
- (c) any reference to an "appointed person" means a person appointed to report to the Welsh Ministers;
- (d) any reference to interested persons is to be read as a reference to the consultees specified in paragraph 11(3) of Schedule 3;
- (e) any reference to the local planning authority is to be read as a reference to the approving body;
- (f) any reference to a "statement of case" is a reference to the statement in regulation 6(1)(c);
- (g) the documents to accompany a questionnaire provided by an approving body pursuant to regulation 16 of the 2017 Regulations, must include where relevant a copy of—
 - (i) any correspondence between the approving body and the consultees referred to in sub-paragraph (d);
 - (ii) any correspondence between the approving body and the local planning authority;
 - (iii) any correspondence between the approving body and the appellant in relation to the application, request or certificate that was not submitted with the documents accompanying the notice of appeal.

(4) In this regulation "valid notice of appeal" means a notice of appeal—

- (a) which complies with the requirements of regulation 6(1),
- (b) is sent to the Welsh Ministers—
 - (i) in accordance with regulation 6(2),
 - (ii) within the relevant period specified in regulation 5, and
- (c) in relation to which the appellant certifies that a copy has been sent to the approving body in accordance with regulation 6(3).

RHAN 4

Penderfynu ar apêl

Penderfynu ar apêl

10.—(1) Mae apêl o dan y Rheoliadau hyn i'w benderfynu gan Weinidogion Cymru.

(2) At ddibenion paragraff (1), caiff Gweinidogion Cymru benodi person (“y person penodedig”) i adrodd i Weinidogion Cymru.

Pwerau Gweinidogion Cymru pan fyddant yn penderfynu ar apêl

11.—(1) Wrth benderfynu ar apêl yn erbyn penderfyniad—

- (a) caiff Gweinidogion Cymru gadarnhau'r penderfyniad neu amnewid y penderfyniad, a
- (b) mae gan Weinidogion Cymru yr un pwerau a dyletswyddau â'r corff cymeradwyo wrth wneud y penderfyniad.

(2) Wrth gadarnhau penderfyniad ynghylch cais am gymeradwyaeth, caiff Gweinidogion Cymru addasu'r penderfyniad drwy ddileu, amnewid neu osod amodau cymeradwyo.

(3) Cymerir bod penderfyniad neu amod a amnewidir neu a osodir gan Weinidogion Cymru yn benderfyniad a wnaed, neu'n amod a osodwyd, gan y corff cymeradwyo.

Dyletswyddau penodol

12.—(1) Wrth amnewid neu addasu penderfyniad ynghylch cais am gymeradwyaeth, rhaid i Weinidogion Cymru roi sylw i—

- (a) y safonau cenedlaethol ar gyfer draenio cynaliadwy, a
- (b) unrhyw ganllawiau a ddyroddir o dan baragraff 15 o Atodlen 3.

(2) Wrth amnewid penderfyniad ynghylch archiad i fabwysiadu, rhaid i Weinidogion Cymru, wrth ystyried p'un a ydynt wedi eu bodloni ai peidio ynghylch Amod 2 ym mharagraff 17 o Atodlen 3, roi sylw i unrhyw ganllawiau a ddyroddir o dan is-baragraff (4) o'r paragraff hwnnw.

(3) Wrth amnewid neu osod amod, rhaid i Weinidogion Cymru roi sylw i—

- (a) ar gyfer amod sy'n pennu bond methu â chyflawni, unrhyw ganllawiau a ddyroddir o dan baragraff 12(6) o Atodlen 3, a
- (b) y safonau cenedlaethol ar gyfer draenio cynaliadwy.

PART 4

Determination of an appeal

Determination of an appeal

10.—(1) An appeal under these Regulations is to be determined by the Welsh Ministers.

(2) For the purposes of paragraph (1), the Welsh Ministers may appoint a person (“the appointed person”) to report to the Welsh Ministers.

Powers of Welsh Ministers when determining an appeal

11.—(1) When determining an appeal against a decision, the Welsh Ministers—

- (a) may affirm the decision or substitute the decision, and
- (b) have the same powers and duties as the approving body when making the decision.

(2) In affirming a decision about an application for approval, the Welsh Ministers may modify the decision by removing, substituting or imposing conditions of approval.

(3) A substituted decision or a condition substituted or imposed by the Welsh Ministers is taken to be a decision made, or a condition imposed, by the approving body.

Specific duties

12.—(1) In substituting or modifying a decision about an application for approval, the Welsh Ministers must have regard to—

- (a) the national standards for sustainable drainage, and
- (b) any guidance issued under paragraph 15 of Schedule 3.

(2) In substituting a decision about a request to adopt, the Welsh Ministers when considering whether or not they are satisfied as to Condition 2 in paragraph 17 of Schedule 3 must have regard to any guidance issued under sub-paragraph (4) of that paragraph.

(3) In substituting or imposing a condition, the Welsh Ministers must have regard to—

- (a) for a condition that specifies a non-performance bond, any guidance issued under paragraph 12(6) of Schedule 3, and
- (b) the national standards for sustainable drainage.

RHAN 5
Amrywiol

PART 5
Miscellaneous

Tystiolaeth a chostau

13.—(1) Mae is-adrannau (2) a (3) o adran 250 o Ddeddf Llywodraeth Leol 1972(1) (ymchwiliadau lleol: tystiolaeth a chostau) yn gymwys gyda'r addasiadau a ddisgrifir ym mharagraff (2) i ymchwiliad o dan y Rheoliadau hyn fel y maent yn gymwys i ymchwiliadau lleol o dan yr adran honno.

(2) Mae'r addasiadau fel a ganlyn—

- (a) mae unrhyw gyfeiriad at y person a benodir i gynnal yr ymchwiliad i'w ddarllen fel cyfeiriad at y person a benodwyd gan Weinidogion Cymru o dan y Rheoliadau hyn;
- (b) mae unrhyw gyfeiriad at awdurdod lleol i'w ddarllen fel cyfeiriad at gorff cymeradwyo.

(3) Mae adran 322C o Ddeddf Cynllunio Gwlad a Thref 1990(2) (costau: Cymru) yn gymwys mewn perthynas ag apêl o dan y Rheoliadau hyn fel y mae'n gymwys i apêl y cyfeirir ato yn yr adran honno.

(4) Yn ddarostyngedig i baragraffau (1) a (3), rhaid i gostau gwrandawriad neu ymchwiliad a gynhelir o dan y Rheoliadau hyn gael eu talu gan Weinidogion Cymru.

Evidence and costs

13.—(1) Subsections (2) and (3) of section 250 of the Local Government Act 1972(1) (local inquiries: evidence and costs) apply with the modifications described in paragraph (2) to an inquiry under these Regulations as they apply to local inquiries under that section.

(2) The modifications are—

- (a) any reference to the person appointed to hold the inquiry is to be read as a reference to the person appointed by the Welsh Ministers under these Regulations;
- (b) any reference to a local authority is to be read as a reference to an approving body.

(3) Section 322C of the Town and Country Planning Act 1990(2) (costs: Wales) applies in relation to an appeal under these Regulations as it applies to an appeal referred to in that section.

(4) Subject to paragraphs (1) and (3), the costs of a hearing or inquiry held under these Regulations must be defrayed by the Welsh Ministers.

Hannah Blythyn

Gweinidog yr Amgylchedd, o dan awdurdod Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig, un o Weinidogion Cymru
13 Tachwedd 2018

Minister for Environment under authority of Cabinet Secretary for Energy, Planning and Rural Affairs, one of the Welsh Ministers
13 November 2018

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(1) 1972 p. 70. Diwygiwyd adran 250 gan adrannau 37, 38 a 46 o Ddeddf Cyfiawnder Troseddol 1982 (p. 48), gan adran 49(2) o Ddeddf Tai a Chynllunio 1986 (p. 63), ac Atodlen 12 iddi, a chan Ddeddf Cyfraith Statud (Diddymiadau) 1989 (p. 43).
(2) Mewnosodwyd adran 322C gan adran 49 o Ddeddf Cynllunio (Cymru) 2015 (decc 4).

(1) 1972 c. 70. Section 250 has been amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46, by the Housing and Planning Act 1986 (c. 63), section 49(2) and Schedule 12, and by the Statute Law (Repeals) Act 1989 (c. 43).
(2) Section 322C was inserted by section 49 of the Planning (Wales) Act 2015 (anaw 4).

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