

Draft Regulations laid before the National Assembly for Wales under paragraph 25(3)(b) of Schedule 3 to the Flood and Water Management Act 2010, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2018 No. (W.)

WATER INDUSTRY, WALES

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

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.

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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2018 No. (W.)

WATER INDUSTRY, WALES

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

Made

Coming into force

7 January 2019

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.

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.

PART 1

Introduction

Title and commencement

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

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

(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).

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

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
 - (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

(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.

- 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) 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) 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.

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.

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.

(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;

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

- (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).

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.

PART 5

Miscellaneous

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

(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).

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⁽¹⁾ (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.

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

(1) Section 322C was inserted by section 49 of the Planning (Wales) Act 2015 (anaw 4).