
WELSH STATUTORY INSTRUMENTS

2017 No. 542 (W. 120)

TOWN AND COUNTRY PLANNING, WALES

The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2017

<i>Made</i>	- - - -	<i>5 April 2017</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>11 April 2017</i>
<i>Coming into force</i>	- -	<i>5 May 2017</i>

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 62, 78, 195 and 333 of the Town and Country Planning Act 1990(1), now exercisable by them(2), make the following Order:

Title, commencement, application and interpretation

1.—(1) The title of this Order is the Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2017 and it comes into force on 5 May 2017.

(2) This Order applies in relation to Wales.

(3) In this Order, “the 2012 Order” (“*Gorchymyn 2012*”) means the Town and Country Planning (Development Management Procedure) (Wales) Order 2012(3).

Amendments to the 2012 Order

2. The 2012 Order is amended in accordance with the following provisions.

Interpretation

3. In article 2(1) at the appropriate place insert—

““full statement of case” (“*datganiad achos llawn*”) means and is comprised of—

(a) a statement in writing containing full particulars of the case—

(1) 1990 c. 8. Sections 78 and 195 were amended by section 47(1) and (2) respectively of the Planning (Wales) Act 2015 (anaw 4) (“the 2015 Act”). Section 333 was amended by section 55 of, and paragraph 3 of Schedule 7 to, the 2015 Act.

(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 article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(3) S.I. 2012/801 (W. 110).

- (i) the applicant proposes to put forward in relation to the application referred to the Welsh Ministers pursuant to a direction under section 77 of the 1990 Act⁽⁴⁾; or
 - (ii) the appellant proposes to put forward in relation to the appeal under section 78 of the 1990 Act; and
- (b) copies of any supporting documents the applicant or the appellant proposes to refer to or put forward in evidence;”.

Reference of applications to the Welsh Ministers

4. For article 13 (notice of reference of applications to the Welsh Ministers) and its heading substitute—

“Reference of applications to the Welsh Ministers

13.—(1) On referring any application to the Welsh Ministers pursuant to a direction under section 77 of the 1990 Act (reference of applications to the Secretary of State), a local planning authority must as soon as reasonably practicable—

- (a) serve on the applicant a notice of reference; and
- (b) send to the Welsh Ministers a copy of the application file.

(2) The local planning authority must send a copy of the notice of reference to the Welsh Ministers at the same time as the notice is sent to the applicant.

(3) An applicant upon whom a notice of reference is served may choose to submit a full statement of case to the Welsh Ministers.

(4) An applicant who so chooses must send—

- (a) the full statement of case so that it is received by the Welsh Ministers within 4 weeks beginning with the day on which the notice of reference is served;
- (b) a copy of the full statement of case to the local planning authority at the same time as it is sent to the Welsh Ministers.

(5) In this article—

(a) “application file” (*“ffeil y cais”*) means the application together with accompanying documents and all correspondence with the local planning authority relating to the application; and

(b) “notice of reference” (*“hysbysiad o atgyfeirio”*) means a notice—

- (i) informing the applicant that the application has been referred to the Welsh Ministers;
- (ii) setting out the reasons given by the Welsh Ministers for issuing the direction; and

(iii) notifying the applicant that—

- (aa) if the applicant so chooses, the applicant may submit a full statement of case to the Welsh Ministers;
- (bb) if the applicant so chooses, the full statement of case must be received by the Welsh Ministers within 4 weeks beginning with the day on which the notice of reference is served; and

(4) Section 77(6A) was inserted in relation to Wales by S.I. 2014/2773 (W. 280).

- (cc) a copy of the full statement of case (if applicable) must be sent to the local planning authority at the same time as it is sent to the Welsh Ministers.”

Appeals under section 78 of the Town and Country Planning Act 1990

5.—(1) In article 26(1)(5)—

- (a) in subparagraph (a) omit “, within the time limit specified in paragraph (2),”;
- (b) in subparagraph (a) after “from the Welsh Ministers” insert “and a full statement of case”;
- (c) at the end of subparagraph (b) insert “and a copy of the full statement of case”.

(2) In article 26(2), for “The time limit mentioned in paragraph (1) is” substitute “For the purposes of section 78(3) of the 1990 Act the prescribed time within which an appeal must be made under section 78(1) of that Act is”.

(3) In article 26, for paragraph (4) substitute—

“(4) The Welsh Ministers may refuse to accept a notice of appeal—

- (a) under section 78(1) of the 1990 Act if the documents required under paragraphs (1) and (3) are not served on the Welsh Ministers within the time prescribed in paragraph (2);
- (b) under section 78(2) of the 1990 Act if the documents required under paragraphs (1) and (3) are not served on the Welsh Ministers.”

Appeals under section 195 of the 1990 Act

6. After article 26A insert—

“Appeals under section 195 of the 1990 Act

26B.—(1) An applicant who wishes to appeal to the Welsh Ministers under section 195 of the 1990 Act (appeals against refusal or failure to give decision on application for a certificate of lawfulness of existing or proposed use or development) must give notice of appeal to the Welsh Ministers by—

- (a) serving on the Welsh Ministers a form obtained from the Welsh Ministers, together with—
 - (i) such of the documents specified in paragraph (2) as are relevant to the appeal; and
 - (ii) a full statement of case;
 - (b) serving on the local planning authority a copy of the form mentioned in subparagraph (a), as soon as reasonably practicable, together with a copy of any relevant documents mentioned in paragraph (2)(d) and a copy of the full statement of case.
- (2) The documents mentioned in paragraph (1)(a)(i) are—
- (a) the application made to the local planning authority which occasioned the appeal;
 - (b) all plans, drawings and documents sent to the authority in connection with the application;
 - (c) all correspondence with the authority relating to the application;

- (d) any other plans, documents or drawings relating to the application which were not sent to the authority;
 - (e) the notice of the decision or determination, if any.
- (3) For the purposes of section 195(1B) of the 1990 Act the prescribed time within which an appeal must be made under section 195(1)(a) of that Act is 6 months from the date of the notice of the decision or determination giving rise to the appeal.
- (4) The Welsh Ministers may refuse to accept a notice of appeal—
- (a) under section 195(1)(a) of the 1990 Act if the documents required under paragraphs (1) and (2) are not served on the Welsh Ministers within the time prescribed in paragraph (3);
 - (b) under section 195(1)(b) of the 1990 Act if the documents required under paragraphs (1) and (2) are not served on the Welsh Ministers.
- (5) The Welsh Ministers may provide, or arrange for the provision of, a website for use for such purposes as the Welsh Ministers think fit which—
- (a) relate to appeals under section 195 of the 1990 Act and this article, and
 - (b) are capable of being carried out electronically.
- (6) Where a person gives notice of appeal to the Welsh Ministers using electronic communications, the provisions of article 32 apply.”

Variation of applications after notice of appeal

7. After article 26B insert—

“Variation of applications after notice of appeal

26C.—(1) For the purposes of sections 78(4BA) and 195(1DA) of the 1990 Act the prescribed circumstance is the application to which the appeal relates contains a correctable error.

(2) An application which is varied in the circumstance prescribed in paragraph (1) is subject to such further consultation as the Welsh Ministers consider appropriate.

- (3) In this article “correctable error” (“*gwall cywiradwy*”) means an error which—
- (a) is corrected in order to ensure consistency in the information contained in the application and the accompanying documents; and
 - (b) does not alter the substance of the application.”

Transitional and saving provisions

8.—(1) Paragraph (2) applies where any of the following occurs in relation to an application made before this Order comes into force—

- (a) the application is referred to the Welsh Ministers pursuant to a direction under section 77 of the Town and Country Planning Act 1990, or
- (b) an appeal is made.

(2) The 2012 Order applies to that application or appeal as though the amendments made by articles 2 to 7 had not been made.

5 April 2017

Jane Hutt
One of the Welsh Ministers

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 2012 Order”).

The main changes are—

(1) amendments to the procedure in relation to applications referred to the Welsh Ministers pursuant to a direction under section 77 of the Town and Country Planning Act 1990 (“the 1990 Act”), including provision for an applicant to submit a full statement of case within a specified timescale if the applicant so chooses (article 4 which substitutes article 13 of the 2012 Order).

(2) amendments to the procedure in relation to appeals under section 78 of the 1990 Act to require

- (a) a notice of appeal to be accompanied by a full statement of case; and
- (b) the appellant to send a copy of the full statement of case to the local planning authority (article 5 which amends article 26 of the 2012 Order).

(3) provision for the procedure for appeals under section 195 of the 1990 Act (appeals against refusal or failure to give decision on application for a certificate of lawfulness of existing or proposed use or development) to—

- (a) require a notice of appeal to be accompanied by a full statement of case;
- (b) require the appellant to send a copy of the full statement of case to the local planning authority; and
- (c) provide that an applicant who wishes to appeal to the Welsh Ministers against a refusal or failure to give a decision on an application for a certificate of lawfulness of existing use or development must do so within six months from the date of the notice of the decision or determination giving rise to the appeal (article 6 which inserts article 26B into the 2012 Order).

(4) provision under section 78(4BA) and (4BB) and section 195(1DA) and (1DB) of the 1990 Act (which were inserted by section 47(1) and (2) of the Planning (Wales) Act 2015) to—

- (a) prescribe a circumstance under sections 78(4BA) and 195(1DA) in which an application may be varied once notice of appeal has been served; and
- (b) provide for an application which is so varied to be subject to such further consultation as the Welsh Ministers consider appropriate (article 7 which inserts article 26C into the 2012 Order).

Article 8 contains transitional and saving provisions.

A regulatory impact assessment has been prepared in relation to this Order. Copies may be obtained from the Planning Division, the Welsh Government at Cathays Park, Cardiff, CF10 3NQ and on the website at www.gov.wales.