

Draft Order 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.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. (W.)

WATER INDUSTRY, WALES

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

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations—

- (a) provide a right of appeal to the Welsh Ministers against decisions under Schedule 3 to the Flood and Water Management Act 2010 about applications for approval of drainage systems and the duty of an approving body to adopt sustainable drainage systems (Part 2);
- (b) make provision about notice of appeal, grounds of appeal and time limits for making an appeal (Part 2);
- (c) apply the procedure for determining planning appeals to the determination of appeals under these Regulations (Part 3);
- (d) make further provision about determination and effect of appeals (Part 4); and
- (e) make provision about the procedure for evidence and costs (Part 5).

Draft Order 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.

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WATER INDUSTRY, WALES

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

Made ***

Coming into force ***

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

A draft of this instrument has been approved by a resolution of the National Assembly for Wales pursuant to paragraph 25(3)(b) of that Schedule.

PART 1

Introduction

Title and commencement

1. The title of these Regulations is the Sustainable Drainage (Appeals) (Wales) Regulations 2018 and they come into force on *** May 2018.

Interpretation

2. In these Regulations—

(1) 2010 c. 29. The Welsh Ministers are “the Minister” for the purposes of paragraph 4 to Schedule 3 in relation to drainage systems in Wales.

“the Act” means the Flood and Water Management Act 2010;

“appellant” means a developer who makes an appeal under these Regulations;

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

“construction work” means construction work which has drainage implications⁽¹⁾;

“consultee” means any person consulted by the approving body⁽²⁾ before determining an application for approval;

“decision” means a decision of an approving body under Schedule 3 about—

- (a) an application for approval (including a decision about conditions), or
- (b) the duty to adopt;

“developer”—

- (a) in relation to a decision about an application for approval, means the person who applied for approval under paragraph 7 of Schedule 3, or
- (b) in relation to a decision about the duty to adopt, has the meaning given in paragraph 23(2)(b) of Schedule 3;

“notice of appeal” means a notice that complies with regulation 4(1);

“planning appeal” means an appeal under section 78 of the Town and Country Planning Act 1990⁽³⁾ in relation to an application for planning permission;

“planning authority” means the authority which determines an application for planning permission;

“request to adopt” means a request under paragraph 23(2)(b) of Schedule 3; and

“Schedule 3” means Schedule 3 to the Act.

(1) See paragraph 7(2) of Schedule 3 to the Flood and Water Management Act 2010 which provides (a) construction work means anything done by way of, in connection with or in preparation for the creation of a building or other structure; and (b) construction work has drainage implications if the building or structure will affect the ability of land to absorb rainwater.

(2) See paragraph 6 of Schedule 3 to the Flood and Water Management Act 2010 for the meaning of approving body.

(3) 1990 c. 8..

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⁽¹⁾.

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

Making an appeal

4.—(1) Notice of an appeal must—

- (a) be in writing, on a form obtained from the Welsh Ministers;
- (b) state the grounds of appeal; and
- (c) 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) A developer 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) Within 3 weeks beginning on the first working day after receiving notice of the Welsh Ministers' decision under regulation 7(1), the approving body must send—

(1) The Welsh Ministers are “the Minister” for the purposes of paragraph 4 to Schedule 3 in relation to drainage systems in Wales.

- (a) to any consultees, a copy of the notice of appeal and a copy of the Welsh Ministers' decision as to procedure under regulation 7(1); and
- (b) to the Welsh Ministers and the appellant, a copy of whichever of the following are relevant —
 - (i) a list of consultees, and any correspondence between the approving body and the consultees;
 - (ii) a copy of any correspondence between the approving body and the planning authority; and
 - (iii) a copy of any correspondence between the approving body and the appellant in relation to the application, request or certificate that was not submitted with the accompanying documents.

(5) In this regulation—

“accompanying documents” means the relevant documents in paragraph (2)(b); and

“working day” means a day which is not a Saturday, Sunday, a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971(1), or other public holiday in Wales.

Notice of appeal given by electronic communication

5.—(1) A developer who gives notice of appeal using electronic communication is taken to have agreed—

- (a) to the use of electronic communication for all purposes relating to the appeal which are capable of being carried out electronically; and
- (b) that the developer's email address is the address for the purposes of communication relating to the appeal.

(2) A developer may revoke an agreement under paragraph (1) by written notice to the Welsh Ministers and the approving body, specifying the date on which the revocation takes effect.

(3) The date of revocation must be at least 7 days after the date on which the notice is given.

(4) In this regulation, “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(2).

(1) 1971 c. 80.

(2) 2000 c.7 Section 15 was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 7, paragraph 158.

Time limit for making an appeal

6. 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 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 decision about a condition specifying a non-performance bond⁽¹⁾—
 - (i) the date approval is granted, or
 - (ii) the date on which the approving body gives a certificate under paragraph 12(2) of Schedule 3; or
- (d) for an appeal against a decision about any other condition, the date approval is granted.

PART 3

Procedure for determining an appeal

Decision about procedure

7.—(1) Within 7 days after the date of receipt of a valid appeal, the Welsh Ministers must make a decision as to the procedure by which the appeal is to be considered.

(2) A decision under paragraph (1) must provide for the appeal to be considered in such one or more of the

⁽¹⁾ See paragraph 12 of Schedule 3 to the Flood and Water Management Act 2010 for the meaning of “non-performance bond”.

following ways as appear appropriate to the Welsh Ministers—

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

(3) .As soon as is practicable after making a decision under paragraph (1), the Welsh Ministers must notify the appellant and the approving body of—

- (a) the decision; and
- (b) details of the procedure for dealing with the appeal.

(4) The Welsh Ministers must publish the criteria that are to be applied in making a decision under paragraph (1).

(5) In this regulation, “valid appeal” means a notice of appeal—

- (a) that is sent to the Welsh Ministers—
 - (i) in accordance with regulation 4(2); and
 - (ii) within the time limit specified in regulation 6; and
- (b) that the appellant certifies has been sent to the approving body in accordance with regulation 4(3).

Procedure for appeals

8.—(1) The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017⁽¹⁾ apply with the modifications described in paragraph (2) to an appeal under these Regulations as they apply to an appeal under those Regulations for the purposes of a planning appeal—

(2) The modifications are—

- (a) any reference to the local planning authority is to be read as a reference to the approving body;
- (b) any reference to the starting date is to be read as a reference to the date on which a notification under regulation 7(3) is given;
- (c) any reference to interested persons is to be read as a reference to a consultee;
- (d) “appellant” and “notice of appeal” have the meaning given by regulation 2;
- (e) “application” means an application for approval; and
- (f) “relevant time limits” includes any time limit under these Regulations.

(1) S.I. 2017/544.

(3) Any provision in those Regulations relating to procedure does not apply if it is inconsistent with these Regulations.

PART 4

Determination of an appeal

Determining an appeal

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

- (a) may affirm the decision or substitute the decision; and
- (b) has the same powers and is subject to the same 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

10.—(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.

Giving effect to the determination of an appeal

11.—(1) As soon as is practicable after determining an appeal, the Welsh Ministers must notify the

appellant and the approving body in writing of the determination.

(2) The Welsh Ministers may notify any other person who, in the opinion of the Welsh Ministers, is affected by the determination.

Effect of appeal

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

(2) If a developer 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.

PART 5

Miscellaneous

Evidence and costs

13.—(1) Subsections (2) to (5) of section 250 of the Local Government Act 1972⁽¹⁾ (local inquiries: evidence and costs) apply with the modifications described in paragraph (2) to a hearing or 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 Welsh Ministers; and
- (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.

Name

Cabinet Secretary for Energy, Planning and Rural Affairs, one of the Welsh Ministers

Date

(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) 1990 c. 8. Section 322C was inserted by the Planning (Wales) Act 2015 (anaw. 4), section 49.

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