

**Explanatory Memorandum to:**

**The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Wales) Regulations 2015**

**This Explanatory Memorandum and Regulatory Impact Assessment has been prepared by the Department for Natural Resources of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1**

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Wales) Regulations 2015

I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM  
Minister for Natural Resources  
**20 October 2015**

## **Description**

- 1.1 The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Wales) Regulations 2015 revoke and replace, with some changes, the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 (“the 1997 Regulations”) in relation to Wales.
- 1.2 These regulations prescribe classes of appeal under the Town and Country Planning Act 1990, the Planning (Listed Building and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990 which are to be determined by persons appointed by the Welsh Ministers, instead of by the Welsh Ministers. They also prescribe certain classes of appeal prescribed under these regulations which are to continue to be determined by the Welsh Ministers. The main changes are to prescribe additional classes of appeal which are to be determined by persons appointed by the Welsh Ministers, instead of by the Welsh Ministers.

## **Matters of special interest to the Constitutional and Legislative Affairs Committee**

- 2.1 None.

## **Legislative background**

- 3.1 The regulations are made in exercise of powers conferred by:
  - Section 333 and paragraph 1 of Schedule 6 of the Town and Country Planning Act 1990;
  - Section 93 and paragraph 1 of Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990; and
  - Section 40 and paragraph 1 of the Schedule to the Planning (Hazardous Substances) Act 1990.
- 3.2 The instrument is subject to the negative procedure.

## **Purpose and intended effect of the provisions**

- 4.1 Where an appeal is to be determined by the Welsh Ministers, it is first dealt with by the Planning Inspectorate which administers the appeal process. A Planning Inspector, rather than issuing a legally binding appeal decision, produces a report for consideration by the Welsh Ministers. The Welsh Ministers subsequently consider the conclusions and recommendations of the Planning Inspector and issue their decision. This additional step adds significant time to the appeal process.

- 4.2 While it remains appropriate for the Welsh Ministers to retain jurisdiction for determination of certain appeal classes (such as those which are more likely to be complex or controversial), for certain other classes this results in significant delay in issuing a decision that may be disproportionate to the complexity of the appeal.
- 4.3 I consider it appropriate to introduce the changes at this stage as part of the wider package of reforms to improve the planning appeals system in Wales proposed through the Positive Planning agenda.
- 4.4 This work addresses reforms to the decision making process for certain planning and related decisions made by the Welsh Ministers, which complements those contained in the Active Stewardship section of the 'Positive Planning' consultation paper, issued in December 2013. These reforms aid those objectives in helping to achieve a more proportionate, cost effective and streamlined decision-making process which meets customers' needs.
- 4.5 In response, this legislation (the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Wales) Regulations 2015) has been made.
- 4.6 The effect of these regulations is to prescribe additional classes of appeal which are to be determined by a person appointed by the Welsh Ministers instead of by the Welsh Ministers. The Planning Inspectorate Wales are the Welsh Ministers' appointed persons for the purposes of determining appeals. Those classes of appeal are:
- (a) Listed building consent and listed building enforcement appeals under sections 20 and 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 concerned with Grade I and II\* listed buildings.
  - (b) Appeals relating to buildings for which grants have been made by the Welsh Ministers under Section 4 of the Historic Buildings and Ancient Monuments Act 1953.
  - (c) Appeals against decisions or failure to take decisions under Section 21 of the Planning (Hazardous Substances) Act 1990.
  - (d) Appeals under paragraph 5 of Schedule 2 of the Planning and Compensation Act 1991 in respect of old mining permissions for development authorised under interim development orders made between 1943 and 1948 including appeals under that provision as applied by regulation 45 of the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permission) (Wales) Regulations 2009 (appeals against non-determination).

- (e) Appeals against the determination of conditions attached to minerals permissions under paragraph 11(1) of Schedule 13 and paragraph 9(1) of Schedule 14 to the Environment Act 1995 including appeals under those provisions as applied by regulation 45 of Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permission) (Wales) Regulations 2009 (appeals against non-determination).
- (f) Appeals under section 208 of the Town and Country Planning Act 1990 against section 207 notices for the replacement of trees.
- (g) Appeals concerning tree preservation orders under section 78 of the Town and Country Planning Act 1990 as applied by sections 198(3)(c) and (4) of that Act.

4.7 The Welsh Ministers will, however, retain the power to recover individual appeals for their own determination, should they consider it appropriate to do so, as with other related planning appeals, by virtue of the application of Schedule 6 of the Town and Country Planning Act 1990, Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Schedule to the Planning (Hazardous Substances) Act 1990.

4.8 The proposed changes are intended to:

- speed up the consenting regime for such appeals by removing approximately 12 weeks from the process, thereby promoting growth and providing greater certainty to developers;
- remove unnecessary and outdated procedures from the determination process; and
- simplify the process in removing a significant step from the appeal process; and
- enable decisions to be made in a timelier and more consistent manner across similar decision-making processes, thus improving the efficiency and proportionality of the appeals system.

## Consultation

5.1 The “Planning and Related Decisions of the Welsh Ministers” consultation document was launched on 7 November 2014 and was open for responses until 30 January 2015. Questions 5-10 of that consultation asked specific questions in relation to changes to the prescribed classes regulations. These are restated below:

<b>Q5</b>	Do you agree that the Planning Inspectorate should be given authority to determine listed building consent and listed building enforcement appeals in relation to Grade I and II* listed buildings
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	in line with current procedures for Grade II listed buildings?
<b>Q6</b>	Do you agree that the Planning Inspectorate should be given authority to determine appeals for which grants have been made by the Welsh Ministers under section 3A or 4 of the Historic Buildings and Ancient Monuments Act 1953?
<b>Q7</b>	Do you agree that the Planning Inspectorate should be given authority to determine appeals against the determination of conditions attached to minerals permissions, made under paragraphs 11(1) of Schedule 13 and paragraph 9(1) of Schedule 14 to the Environment Act 1995?
<b>Q8</b>	Do you agree that the Planning Inspectorate should be given authority to determine appeals against decisions or failure to take decisions under section 21 of the Planning (Hazardous Substances) Act 1990?
<b>Q9</b>	Do you agree that the Planning Inspectorate should be given authority to determine appeals under section 208 of the Town and Country Planning Act 1990 against section 207 notices for the replacement of trees?
<b>Q10</b>	Are there any additional comments you wish to make in relation to these changes to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997?

5.2 In response to the consultation, there was clear support for the proposed amendments to the prescribed classes regulations. Only two responses were received which disagreed to the proposals to question 5. This is illustrated in the below table of responses to questions 5-9.

<b>Question</b>	<b>Yes</b>	<b>Yes (subject to further comment)</b>	<b>No</b>	<b>Don't Know</b>
<b>Q5</b>	76%	0%	7%	17%
<b>Q6</b>	79%	0%	0%	21%
<b>Q7</b>	72%	3%	0%	24%
<b>Q8</b>	76%	0%	0%	24%
<b>Q9</b>	79%	0%	0%	21%

5.3 Question 10 gave respondents the opportunity to express their general views on the changes proposed in questions 5 – 9.

5.4 In addition to the statistical summary, a number of comments were received stating that the determination of possible appeals by

Inspectors, and consequent earlier decisions, was in principle welcomed. Many of the respondents also used question 10 to express their general views on decisions of the Welsh Ministers. These included:

- Concerns that the length of time taken for decisions by the Welsh Ministers to be dealt often varies and substantial delays can be caused;
- There is a need for statutory timetables for the issuing of decisions by the Welsh Ministers, in particular on called applications, recovered appeals and commons registration applications, as the current scenario has significant financial and legal implications for businesses subject to these decisions;
- The cost of appeals should be born by the applicant; and
- The call-in procedures should be more transparent and should include a timetable which gives a firm indication as to when a decision is likely to be issued.

5.5 Whilst the above issues have been noted, they were not within the scope of this consultation.

## **REGULATORY IMPACT ASSESSMENT**

### **Options**

6.1 Two options have been considered

- Option 1 – No change to the prescribed classes of appeal that are determined by an appointed person.
- Option 2 – Amend the prescribed classes of appeal to be determined by an appointed person to include additional classes of appeal.

### **Option 1 – No change**

#### **Description**

6.2 Under this option there would be no changes to the current legislation.

6.3 The Planning Inspectorate is an executive agency of the Welsh Government and the Department for Communities and Local Government. They are, for the purposes of these regulations, the appointed person which administers planning and related appeals. The Inspectorate also has authority to determine certain appeal types, which are set out in the 1997 Regulations. These classes include section 78 planning appeals, enforcement appeals and listed building appeals for Grade II listed buildings.

- 6.4 The vast majority of appeals are determined by the Planning Inspectorate, though certain classes of appeal are reserved for determination by the Welsh Ministers.
- 6.5 Currently, only appeals falling within the prescribed classes set out in regulation 3 of the 1997 Regulations may be determined by an appointed person. An appeal falling within a class as set out at regulation 4 of the 1997 Regulations will be determined by Welsh Ministers, irrespective of the level of complexity or controversy.
- 6.6 The requirement for these appeals to be determined by the Welsh Ministers, rather than by the Planning Inspectorate, can add an additional 12 weeks to the appeal process. This is to allow sufficient time for the Welsh Ministers to consider the conclusions and recommendations of a Planning Inspector and issue their decision.
- 6.7 The sectors most likely to be affected by the proposals are:
- Welsh Government;
  - Local Planning Authorities;
  - Development Industry; and
  - The Community

## **Cost**

- 6.8 This option maintains the status quo and does not create additional costs. It is estimated that 1 appeal (rounded up) per year, within the classes identified above, will be determined by Welsh Ministers.

### Welsh Government

- 6.9 The Planning Inspectorate is the appointed person to administer the appeal process. Its costs are assessed as part of the Welsh Government's costs, as their activities in Wales are funded by the Welsh Government. Across all types of appeal, it costs the Planning Inspectorate, on average £3,700 to process an appeal. For appeals falling within the prescribed classes set out in option 2, the average cost is similar.
- 6.10 Where an appeal is reserved for determination by the Welsh Ministers, the Planning Inspectorate will administer and conduct an examination into the appeal. An Inspector appointed by them will produce a report containing a recommendation for the consideration of the Welsh Ministers.
- 6.11 In addition to the cost to the Planning Inspectorate, it costs the Welsh Government approximately £2,700, on average, to process and determine an appeal which has been recovered for determination by them.

- 6.12 3 appeals falling within the classes set out in Option 2 have been determined by Welsh Ministers since April 2010. This equates to an average of 0.6 appeals per year.
- 6.13 In addition to those appeals which the Welsh Government determine as a result of the 1997 Regulations, 2 S.78 planning appeals, linked with appeals in these classes, have been determined by Welsh Ministers. A linked S.78 appeal is an appeal which is situated on the same site, but addresses an associated planning permission. Linked appeals are considered concurrently.
- 6.14 Linked appeals have a reduced resource/cost impact due to there being no requirement to hold a separate event (Site Visit, Hearing, or Inquiry). Further to this there will be some additional administrative saving through dealing with the appeals jointly. It is reasonable to assume that the cost of administering and determining a recovered appeal will be significantly less than that of the principal appeal. The additional workload, administration time and on-costs in dealing with a linked appeal will produce approximately 40% of the time spent additional to that of the principal appeal. Consequently the cost for 2 linked appeals over the 5 year period is estimated as 0.8 (rather than 2.0) of the baseline figure.
- 6.15 The cost per year to the Welsh Government equates to £5,120 to process and decide 0.8 appeals<sup>1</sup> per year (£2,960 for the Planning Inspectorate and £2,160 for the Welsh Ministers). This is demonstrated in the below cost analysis.

*Table 1: Annual Cost to Welsh Government*

	Appeals	Linked Appeals	Total
Planning Inspectorate	£2,220	£740	£2,960
Welsh Ministers	£1,620	£540	£2,160
Total	£3,840	£1,280	£5,120

### Local Planning Authorities

- 6.16 Where an appeal has been submitted, LPAs will spend time preparing and submitting evidence. Whilst there is no cost information available per appeal examination method and per type of appeal, the average cost to deal with an appeal across all examination methods is estimated as £1,700<sup>2</sup>. These costs will remain the same regardless of decision-maker

<sup>1</sup> 3 appeals at 1.0 and 2 linked appeals at an additional 0.4 each for a total of 3.8 appeals across a 5 year period (rounded).

<sup>2</sup> "Planning Service Benchmarking Club 2011: Barchester City Council", PAS/CIPFA Report February 2012, pp. 12-13.



as there is no additional participation by the LPA once the appeal has passed to the Welsh Ministers.

6.17 The annual costs to LPAs will be  $0.8 \times \text{£}1,700$  i.e.  $\text{£}1,360$ .

#### Development Industry

6.18 It is estimated that developers incur an average cost of approximately  $\text{£}1,800^3$  per planning appeal, across all appeal procedures. These costs will remain the same regardless of decision-maker as there is no further requirement to participate in the process once the appeal has been passed to Welsh Ministers for decision. Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a significant burden on developers and the Welsh economy.

6.19 The annual cost to the Development Industry is therefore  $\text{£}1,440$ , based on an average of 0.8 appeals per year.

#### The community

6.20 The community and interested parties require time to consider new information provided during an appeal. Whilst this is not financially quantifiable, in 2007 the Department for Communities and Local Government estimated that, on average, reviewing and commenting on evidence takes 1.5 hours per participant per case. It is reasonable to assume that this estimate applies to Wales as the circumstances and appeals system are essentially the same.

6.21 The ability of interested parties/the general public to participate is unchanged in either option as there is no further opportunity to comment once an appeal has been passed to the Welsh Ministers for decision.

6.22 The annual cost, in time, per participant, is 1.2 hours, based on an average of 0.8 appeals per year.

### **Benefits**

#### Welsh Government

6.23 The current process provides the Welsh Government with the benefit of retaining democratic accountability for certain classes of appeal. However, the current decision-making process for these classes of appeal adds an additional step by default for minor appeals with no obvious added-value. This delay in decision-making may undermine Ministerial aims of encouraging economic recovery.

#### Local Planning Authorities

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<sup>3</sup> “Benchmarking the costs to applicants of submitting a planning application”, ARUP, July 2009, p.21; and Planning for a Sustainable Future, Government White Paper, 2007, pp.199-200.

- 6.24 Applications that fall within the listed classes are subject to an appeal process. The involvement of the LPA will remain the same regardless of decision maker. Delays in determining an appeal create uncertainty in the planning process and different processes for similar development create inconsistency in the appeals process.

#### Development Industry

- 6.25 Delayed planning decisions create uncertainty for developers in bringing forward sites for development.

#### The community

- 6.26 Delayed planning decisions create uncertainty for the community. Different processes for similar development create inconsistency in the appeals decision process.

### **Option 2 – Amend the prescribed classes of appeals to be determined by an appointed person**

#### **Description**

- 6.27 This second option makes changes to the 1997 Regulations which enable the appointed person (usually the Planning Inspectorate in Wales) to determine certain classes of appeal by default, rather than by Welsh Ministers. Those classes of appeal are specified at paragraph 1.11.

#### **Cost**

##### Welsh Government

- 6.28 Option 2 will result in the removal of the requirement for the Welsh Ministers to determine certain appeal types. There will be a cost saving for the Welsh Government equivalent to its current involvement in determining appeals within the classes set out above. The cost of recovery of these appeals to the Welsh Ministers is approximately £2,160 per year. Thus, the total cost to the Welsh Government of administering the process for these classes of appeal would be £2,960 per year (the cost of the Planning Inspectorate's involvement). This equates to a cost saving of £2,160 per year.

##### Local Planning Authorities

- 6.29 Where an appeal has been submitted, LPAs will spend time preparing and submitting evidence. Whilst there is no cost information available per appeal examination method and per type of appeal, the average cost

to deal with an appeal across all examination methods is estimated as £1,700<sup>4</sup>. Costs will remain the same regardless of decision-maker and there will be no saving under this Option. The annual cost for involvement in 0.8 appeals is £1,360.

### Development Industry

6.30 It is estimated that developers incur an average cost of approximately £1,800<sup>5</sup> per planning appeal, across all appeal procedures. The annual cost for involvement in 0.8 appeals is approximately £1,440. This option is not expected to affect the costs resulting from submitting and participating in the appeal process. Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a significant burden on developers and the Welsh economy. By removing the additional step of determination by Welsh Ministers any costs associated with this delay may be avoided.

### The community

6.31 The community and interested parties require time to consider new information provided during an appeal. Whilst this is not financially quantifiable, the ability of interested parties/the general public to participate is unchanged in either option. This option is not expected to affect the time costs resulting from submitting and participating in the appeal process.

## **Benefits**

### Welsh Government

6.32 The removal of the requirement for certain classes of appeal to be dealt by the Welsh Ministers will simplify the appeals process by removing a significant step. It will enable decisions to be made in a more consistent manner, improving the overall efficiency and proportionality of the appeals system. The Welsh Ministers will retain the power to recover jurisdiction over an appeal from the Planning Inspectorate should they consider it appropriate due to complexity or controversy, in line with other planning-related appeals.

### Local Planning Authorities

6.33 Under this option, local Authorities will benefit from the certainty of a timelier decision, consistent with similar appeal types of a similar scale and importance.

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<sup>4</sup> “Planning Service Benchmarking Club 2011: Barchester City Council”, PAS/CIPFA Report February 2012, pp. 12-13.

<sup>5</sup> “Benchmarking the costs to applicants of submitting a planning application”, ARUP, July 2009, p.21; and Planning for a Sustainable Future, Government White Paper, 2007, pp.199-200.

## Development Industry

6.34 This option will bring benefits to the development industry in ensuring that appeal decisions will be made in a timely manner. The Welsh Ministers aim to determine appeals within 12 weeks of receipt of an Inspector's report. The removal of this requirement to determine will reduce the time spent to determine an appeal by that amount, thus improving the efficiency and proportionality of the appeals system.

## The community

6.35 Under this option, decisions on appeal proposals will be subject to a shorter timescale, removing the associated uncertainty where no firm decision has been made on a particular proposal.

## **Summary and Preferred Option**

6.36 Under option 1, developers seeking to bring forward development face delays in obtaining a decision on their appeal. The additional time taken in processing and deciding these appeals also creates uncertainty for Local Planning Authorities and the wider community. There is a cost and resource implication for the Welsh Government which may not be proportionate to the scale of development.

6.37 The preferred option, option 2, proposes that certain appeals which are currently decided by the Welsh Ministers will be determined by an appointed person. This removes an unnecessary step in reaching a decision on an appeal, resulting in a timelier, more proportionate appeal process, consistent with appeals for similar development. This option retains the added security of the power of Welsh Ministers to recover jurisdiction over an appeal should it be considered appropriate to do so.

6.38 The overall cost benefit of option 2 is small, as illustrated in the below table, but the benefits of a timelier decision, and the certainty this will bring represent significant justification for implementing this option.

*Table 2*

	Option 1 (annual cost)	Option 2 (annual cost)	Total saving (annual)
Planning Inspectorate	£2,960	£2,960	<b>£0</b>
Welsh Ministers	£2,160	£0	<b>£2,160</b>
Local planning authorities	£1,360	£1360	<b>£0</b>

## Appendix 1 Competition Filter

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector categorised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No