

REGULATORY APPRAISAL

THE TOWN AND COUNTRY PLANNING (ELECTRONIC COMMUNICATIONS) (WALES) (NO.2) ORDER 2004

Purpose and intended effect

1. The proposed Order made under section 8 to 10 of the Electronic Communications Act 2000 is to facilitate electronic handling of parts of the town and country planning service by applicants, agents, local and central government. This would meet 4 of the 5 key commitments in 'Cymru Ar-lein' (it does not meet the commitment to ensure everyone in Wales can acquire the skills and understanding to participate in and benefit from the Information Age) and cover the commitment in 'Planning: Delivering for Wales' to make significant improvements in the quality of the planning service and the involvement of communities, including business, in plan-making and decision-making. The Electronic Communications Act, which came into force in May 2000, permits provision to be made to authorise or facilitate the use of electronic communications and electronic data storage. Sections 8 and 10 of the Act enables the National Assembly for Wales, with the consent of the Secretary of State for Wales, to make orders amending existing legislation to remove obstacles to the use of electronic communication and storage in place of paper. Section 9 indicates who in England and Scotland may make these Orders.
2. The Order amends The Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003 (SI 2003 No.390 (W.52)) which came into force on 1 April 2003 and which set out the procedures to be followed if a planning-related appeal is to be determined by way of an exchange of written representations. It also amends The Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003 (SI 2003 No. 394 (W.53)) and The Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003 (SI 2003 No. 395 (W.54)), both of which came into force on 1 April 2003 and relate to some of the enforcement notice appeals procedures. This Order facilitates the handling of the most common types of appeals – planning appeals and enforcement notice appeals. The intention is to enable further types of appeal for example, lawful development certificate appeals and advertisements appeals, to be handled electronically in due course. There is no timetable for this as the expansion of the process will depend very much on the availability of the expansion. Further Orders to be made under Section 8 of the Electronic Communications Act 2000 will be required as and when further types of appeals and applications are to be added to the process and will amend the legislation appropriate to those appeals and applications. Future primary and secondary legislation is being prepared so that it will be compatible with electronic working.
3. The amendments made by the Order confer new meanings on expressions used in the primary and secondary legislation – which was drafted for a paper-based system - so that it can explicitly be construed as applying to electronic communication. They also change some relevant mandatory administrative actions, with no loss of equity for parties using or not using the electronic process, to make them operate more effectively by electronic means. The Order **does not**, however, replace the existing paper-based system, which will continue to operate for as long as those engaging in the planning system wish to use it.
4. The Order does not prescribe the means by which electronic services might occur. They merely allow those who wish to make use of such services. Generally accepted

standards of electronic service provision will apply and such questions as compatibility of software and the security of systems are matters that will need to be addressed by those making use of electronic services.

Risk Assessment

5. There are no risks of substance. The Order does no more than create an opportunity for those that wish to use an electronic, rather than paper-based, planning system. There is therefore no threat to the existing regime and no identifiable risk associated with creating the new parallel electronic one.

Options

6. In making this Order, the selection of optional means of delivery has not arisen. The option of 'do nothing' has been dismissed as this would not meet the commitments in 'Cymru Ar-lein' and 'Planning: Delivering for Wales'. Given that the constraints on electronic planning services are in primary and secondary legislation, the only suitable delivery mechanism is to remove those constraints by further legislation, namely an Order under section 8 of the 2000 Act.

Benefits

7. The benefits afforded by the Order will be conferred where parties to the planning process take up the opportunity to engage in the process electronically. The benefits when planning services are undertaken electronically include:
 - faster (almost instantaneous) and uncorrupted transmission between parties (enabling decision making times to be reduced and quality to be enhanced);
 - reducing postage, packing, photocopying and printing costs;
 - reduced storage space for papers and files;
 - closer linkages between participants in the planning system; and
 - more open access to the planning system for all parties.

These benefits can arise for any of the parties to the process. The amount of the benefits will vary according to the circumstances of those involved.

8. In drafting the Order we have sought, where possible, but without compromising the equity to users of either system, to streamline the planning system for electronic users where the paper system does not suit electronic working. For instance, in certain cases a number of paper copies of documents are currently needed, where one electronic copy will suffice, and so in the electronic regime we have required only one copy.

Costs

9. There will be costs to those involved in using the planning system in electronic format, because of the need to acquire and maintain electronic equipment. The costs will vary according to the circumstances of those involved and therefore cannot be quantified. However, the costs will include the need to meet accepted standards of electronic service provision, including the compatibility of software and the security of systems. Work on

the Planning Portal has included a drive to ensure that a single data standard is agreed for all planning related electronic service delivery to ensure the highest level of interoperability.

10. Given that there is a presumption that in the long term all services should be undertaken electronically, any costs arising from initiating electronic planning services are ones that would arise generally in due course. In the shorter and medium terms there will be offsetting savings for those engaging in the planning system on account of the specific benefits to the planning system identified above.
11. The costs could only be mitigated by not complying with the commitments in 'Cymru Ar-lein' and 'Planning: Delivering for Wales'. As already explained, that option has been dismissed.

Securing compliance

12. This is a facilitating Order and no compliance with the Order needs to be secured. Nonetheless, those parties using the electronic system will continue to be subject to checks that exist in the planning system. For instance, applicants and agents will have electronic applications scrutinised by local planning authorities to ensure that they have been completed correctly and are associated with the correct fee, authorities will be subject to audit and court scrutiny, and so will the National Assembly and its agency the Planning Inspectorate (PINS).

Impact on small businesses

13. Their need to acquire and/or maintain electronic equipment will be an impact on any small business that engages in the planning system electronically. The costs involved in this are considered to be outweighed by the positive benefits that flow from electronic working. There will be no disbenefits for small businesses should they continue to the use paper based system.

Competition assessment

14. The markets that the Order will affect are those of the supply of hard and software and maintenance of services in information communications technology. Research for the former Department of Transport, Local Government and the Regions found that it is a well-developed market. The Order is considered to have beneficial effects on competition. It broadens the scope for ICT in planning and thus opens new opportunities for existing suppliers and may stimulate the involvement of new players. Certain suppliers enjoy significant shares of the market but there would be no differential impacts on existing players or new entrants. So no detailed assessment has been undertaken following the application of the competition filter.

Consultation

With Stakeholders

15. The Order is a highly complicated piece of technical legislation which makes a large number of minor modifications to the wording of various statutory instruments made by the Assembly. As it does no more than create an opportunity for those that wish to use an electronic, rather than paper-based, planning system, it was considered there would be little, if any, benefit in circulating it for comment. However, by letter dated 10 August

2004 all 25 local planning authorities in Wales, the Planning Officers' Society for Wales, Royal Town Planning Institute (Wales), Royal Institute of Chartered Surveyors (Wales) and the Welsh Local Government Association were informed of the preparation of the Order and invited to comment on the draft Regulatory Appraisal. No responses were received.

With Subject Committee

16. The Order was notified to the EPC Committee through inclusion in the rolling programme of forthcoming legislation put to the committee on 6 October 2004 (item No.19) but was not identified for detailed scrutiny.

Review

17. As the Order is facilitating, rather than requiring, the use of electronic communications in the planning system, there is no formal need for monitoring and evaluation. A number of tools will be at the disposal of the Assembly, however, to measure any impacts of the Order. These include the Planning Portal which has been developed to facilitate an electronic planning system and the connection to it of the PINS appeals service, where the number of planning appeals submitted electronically can be monitored. Wider monitoring of the use of electronic planning will be unrealistic given that the planning service involves all local planning authorities and those who make and comment on 500,000 planning applications each year. In terms of efficiency and effectiveness, any impact could be measured through statistics on local authority performance and PINS' performance in handling appeals.

Summary

18. This Order opens up a large part of the planning system to electronic communication and, while those who choose to participate – and this would include individuals, business and local and central government – will bear their own costs of their participation, it is considered the benefits they will enjoy through electronic working outweigh the costs incurred.