

Draft Regulations laid before the National Assembly for Wales under section 303(8) of the Town and Country Planning Act 1990, for approval by resolution of the National Assembly for Wales

DRAFT WELSH STATUTORY
INSTRUMENTS

2016 No. (W.)

**TOWN AND COUNTRY
PLANNING, WALES**

**The Developments of National
Significance (Fees) (Wales)
Regulations 2016**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the payment of fees in respect of—

(1) pre-application services provided by the Welsh Ministers and local planning authorities under the Developments of National Significance (Wales) Regulations 2016 (regulations 3 and 4);

(2) notifications of proposed applications under section 62D of the Town and Country Planning Act 1990 (“the 1990 Act”) (regulation 5);

(3) applications under section 62D of the 1990 Act, including fees for local impact reports required in relation to such applications by section 62I of the 1990 Act (regulations 6 to 12).

They also prescribe the circumstances in which—

(1) part of initial fees paid to the Welsh Ministers in respect of applications under section 62D of the 1990 Act are refunded (regulation 7); and

(2) fees paid to the Welsh Ministers for local impact reports are remitted to local planning authorities or refunded to applicants (regulations 8 and 9).

The Regulatory Impact Assessment applicable to these Regulations is obtainable from the Welsh Government at: Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government website at www.wales.gov.uk.

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Made

Coming into force

1 March 2016

The Welsh Ministers, in exercise of the powers conferred on them by sections 303 and 333(2A) of the Town and Country Planning Act 1990⁽¹⁾, make the following Regulations.

In accordance with section 303(8) of that Act, a draft of this instrument was laid before and approved by resolution of the National Assembly for Wales.

Title, commencement and application

1.—(1) The title of these Regulations is the Developments of National Significance (Fees) (Wales) Regulations 2016 and they come into force on 1 March 2016.

(2) These Regulations apply where—

- (a) an application is made to the Welsh Ministers under section 62D of the 1990 Act (developments of national significance:

(1) 1990 c. 8. Section 303 was substituted by section 199 of the Planning Act 2008 (c. 29) and was amended by section 27 of, and paragraph 18 of Schedule 4 to, the Planning (Wales) Act 2015 (anaw. 4). See section 336(1) of the 1990 Act for the meaning of “prescribed”. Other amendments are not relevant to these Regulations. Section 333(2A) was inserted by section 118(1) of, and paragraphs 1 and 14 of Schedule 6 to, the Planning and Compulsory Purchase Act 2004 (c. 5).

applications to be made to the Welsh Ministers)(1); or

(b) such an application is proposed to be made.

Interpretation

2.—(1) In these Regulations—

“the 1990 Act” (“*Deddf 1990*”) means the Town and Country Planning Act 1990;

“the 2016 Order” (“*Gorchymyn 2016*”) means the Developments of National Significance (Procedure) (Wales) Order 2016(2);

“the 2016 Regulations” (“*Rheoliadau 2016*”) means the Developments of National Significance (Wales) Regulations 2016(3);

“applicant” (“*ceisydd*”) means a person who either proposes to make an application or has made such an application; and

“appointed person” (“*person penodedig*”) means the person appointed under the 2016 Regulations to exercise the functions specified in those Regulations (subject at all times to any direction under paragraph 9 of Schedule 4D to the 1990 Act)(4).

(2) In these Regulations any reference to —

(a) the receipt of a payment by way of a fee is a reference to the recipient having received the full amount of the fee in cleared funds;

(b) a failure to pay a fee is a reference to the recipient not having received the full amount of the fee in cleared funds or having received a cheque in the full amount of the fee which is subsequently dishonoured; and

(c) a column or a row is a reference to a column or a row of the table in the Schedule.

Fee for local planning authorities’ pre-application services

3.—(1) Where a request for pre-application services is made to a local planning authority under the 2016 Regulations, a fee must be paid to the authority.

(2) The fee payable under this regulation is the amount set out in the relevant row of column 3.

(3) The fee must accompany the request.

(1) Section 62D was inserted by section 19 of the Planning (Wales) Act 2015.

(2) S.I. 2016/xxxx (W.).

(3) S.I. 2016/xxxx (W.).

(4) Schedule 4D was inserted by section 26 of, and paragraph 1 of Schedule 3 to, the Planning (Wales) Act 2015.

(4) If the applicant fails to pay the fee under this regulation, the local planning authority need take no steps in relation to the request until payment is received by the authority.

(5) Any fee paid pursuant to this regulation must be refunded if the request is rejected as invalid.

(6) In this regulation “the local planning authority” (“*yr awdurdod cynllunio lleol*”) means the local planning authority to which, but for section 62D of the 1990 Act, the proposed application would have been made.

Fee for Welsh Ministers’ pre-application services

4.—(1) Where the Welsh Ministers provide pre-application services in accordance with the 2016 Regulations (“pre-application services”) (“*gwasanaethau cyn ymgeisio*”), a fee must be paid to the Welsh Ministers.

(2) The fee payable is calculated by multiplying the total time (in hours and part of an hour) spent by a planning officer providing pre-application services by the hourly rate for a planning officer.

(3) The hourly rate for a planning officer is the amount set out in the relevant row of column 3.

(4) The Welsh Ministers may invoice the applicant at reasonable intervals in respect of the number of hours spent in providing pre-application services and the amount of the fee for those services.

(5) Any fee due in respect of pre-application services must be received by the Welsh Ministers within the period of 21 days beginning with the date the relevant invoice from the Welsh Ministers is sent.

(6) If the applicant fails to pay any fee for pre-application services within the period specified in paragraph (5), the Welsh Ministers need take no further steps in relation to the provision of pre-application services until payment has been received.

(7) In this regulation “planning officer” (“*swyddog cynllunio*”) means an officer working for the joint executive agency of the Department for Communities and Local Government and the Welsh Government known as the Planning Inspectorate.

Fee for notification of a proposed application

5.—(1) Where the applicant gives notification of a proposed application in accordance with section 62E(1) of the 1990 Act (notification of proposed application under section 62D)(1), a fee must be paid

(1) Section 62E was inserted by section 19 of the Planning (Wales) Act 2015.

to the Welsh Ministers (a “notification fee”) (*“ffi hysbysu”*).

(2) The notification fee is the amount set out in the relevant row of column 3.

(3) The notification fee must accompany the notification.

Fee for making an application

6.—(1) A fee must be paid to the Welsh Ministers by the applicant for making an application.

(2) The fee is the aggregate of—

- (a) the initial fee in accordance with regulation 7;
- (b) the fee for each local impact report in accordance with regulation 8;
- (c) the fee for examination of an application calculated in accordance with regulation 10(2);
- (d) the fee for any notification of intention to vary an application in accordance with regulation 11(2); and
- (e) the fee for the Welsh Ministers determining an application calculated in accordance with regulation 12(2).

Initial fee for an application

7.—(1) Where an application is made to the Welsh Ministers, an initial fee must be paid to the Welsh Ministers (an “initial fee”) (*“ffi ddechreuol”*).

(2) The initial fee is the amount set out in the relevant row of column 3.

(3) The initial fee must accompany the application.

(4) The Welsh Ministers must refund 75% of the initial fee to the applicant where—

- (a) the application is withdrawn before the Welsh Ministers give notice of acceptance to the applicant; or
- (b) the applicant is notified under article 15(5) of the 2016 Order that the application is not accepted.

(5) The Welsh Ministers must refund 25% of the initial fee to the applicant where notice of acceptance has been given but the application is withdrawn before the end of the representation period.

(6) In paragraphs (4) and (5), references to the initial fee are to the initial fee paid by the applicant to the Welsh Ministers.

(7) In this regulation—

- (a) “notice of acceptance” (*“hysbysiad derbyn”*) means notice under article 15(2) of the 2016 Order that the application is accepted; and

- (b) “the representation period” (“*y cyfnod sylwadau*”) means the period provided for in article 4 of the 2016 Order⁽¹⁾.

Fee for a local impact report

8.—(1) A fee must be paid to the Welsh Ministers in respect of each local impact report⁽²⁾ required to be submitted by a relevant local planning authority⁽³⁾(a “report fee”) (“*ffi am adroddiad*”).

(2) The report fee is the amount set out in the relevant row of column 3.

(3) The report fee must accompany the application.

(4) The Welsh Ministers must—

- (a) remit such fee in accordance with regulation 9(2); or
- (b) remit and refund such fee in accordance with regulation 9(3); or
- (c) refund such fee in accordance with regulation 9(1) or 9(4).

Remission and refund of report fee

9.—(1) The Welsh Ministers must refund the report fee to the applicant where —

- (a) the application is withdrawn before a relevant local planning authority submits a local impact report to the Welsh Ministers; or
- (b) the Welsh Ministers notify the applicant under article 15(5) of the 2016 Order that the application is not accepted.

(2) Where a relevant local planning authority submit a local impact report to the Welsh Ministers by the deadline specified by the Welsh Ministers in accordance with section 62I(3) of the 1990 Act (“the deadline”) (“*y terfyn amser*”), the Welsh Ministers must remit the report fee to the authority.

(3) Where a relevant local planning authority submit a local impact report to the Welsh Ministers after the deadline but within the period of 14 days beginning with the deadline, the Welsh Ministers must—

- (a) remit half of the report fee to the authority; and

(1) Article 4 provides that the representation period is five weeks but the Welsh Ministers may by direction extend this in any particular case.

(2) For “local impact report” see section 62K of the 1990 Act. Section 62K was inserted by section 21 of the Planning (Wales) Act 2015. A local impact report must be submitted by relevant local planning authorities, see section 62I.

(3) For “relevant local planning authority” see section 62I(5) of the 1990 Act. Section 62I was inserted by section 21 of the Planning (Wales) Act 2015.

(b) refund the other half of the report fee to the applicant.

(4) Where a relevant local planning authority do not submit a local impact report to the Welsh Ministers either by the deadline or within the period of 14 days beginning with the deadline, the Welsh Ministers must refund the report fee to the applicant.

(5) In this regulation references to the “report fee” are to the report fee paid to the Welsh Ministers by the applicant.

Fee for examining an application

10.—(1) A fee must be paid to the Welsh Ministers for examining an application (an “examination fee”) (*“ffi archwilio”*).

(2) The examination fee is to be calculated as the aggregate of—

- (a) the number of days or part of a day spent by the appointed person examining the application multiplied by—
 - (i) for that part of the application examined on the basis of written representations, the daily rate set out in the relevant row of column 3;
 - (ii) for that part of the application examined by way of hearing or inquiry, the daily rate set out in the relevant row of column 3; and
- (b) any additional costs actually incurred by or on behalf of the Welsh Ministers in connection with examining the application.

(3) The costs referred to in paragraph (2)(b) include—

- (a) costs incurred in the provision of a venue or other facilities in respect of a hearing or inquiry, including costs reasonably incurred in respect of a hearing or inquiry that does not take place;
- (b) costs incurred in giving public notice of a hearing or inquiry;
- (c) any costs attributable to the appointment of an assessor;
- (d) any reasonable legal costs or other disbursements incurred or paid by or on behalf of the Welsh Ministers in connection with examining an application.

(4) The Welsh Ministers must give the applicant as soon as reasonably practicable an estimate in writing of the number of days examination of the application is likely to take.

(5) The Welsh Ministers may revise the estimate referred to in paragraph (4), at any time.

(6) The Welsh Ministers may invoice the applicant at reasonable intervals in respect of the number of actual days spent and for any actual costs incurred, in examining the application.

(7) Any fee due under this regulation must be received by the Welsh Ministers within the period of 21 days beginning with the date the relevant invoice from the Welsh Ministers is sent.

(8) If the applicant fails to pay any fee due under this regulation within the period specified in paragraph (7), the Welsh Ministers need take no further steps in relation to the application until payment has been received by the Welsh Ministers.

(9) If the applicant fails to pay any fee due under this regulation within the period of 12 weeks beginning on the expiry of the period specified in paragraph (7), the Welsh Ministers need take no further steps in relation to the application and the application is deemed to be withdrawn.

(10) A fee remains payable under this regulation where the application is withdrawn before a report is made under the 2016 Regulations.

(11) In this regulation—

- (a) “assessor” (“*asesydd*”) means a person appointed to sit with an appointed person at a hearing or inquiry or re-opened hearing or inquiry to assist the appointed person;
- (b) a “day” (“*diwrnod*”) is deemed to consist of 7.4 hours; and
- (c) “examining an application” (“*archwilio cais*”) includes examination of any secondary consents⁽¹⁾ connected to the application where the decision on those consents is to be made by the Welsh Ministers.

Fee for notification of intention to vary

11.—(1) Where an applicant gives notification of intention to vary an application, a fee must be paid to the Welsh Ministers (a “variation fee”) (“*ffi amrywio*”).

(2) The variation fee is the amount set out in the relevant row of column 3.

(3) The variation fee must accompany the notification.

(4) If the applicant fails to pay the variation fee, the Welsh Ministers need take no steps in relation to the

(1) For secondary consents, see section 62H of the 1990 Act. Section 62H was inserted by section 20 of the Planning (Wales) Act 2015. Secondary consents are prescribed for the purposes of section 62H by the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 (S.I. 2016/xxxx) (W.xxxxx).

notification until payment is received by the Welsh Ministers.

(5) In this regulation “notification of intention to vary” (*“hysbysiad o fwriad i amrywio”*) means notification to the Welsh Ministers under article 27(3) of the 2016 Order, including that article as applied by the 2016 Regulations.

Fee for the Welsh Ministers determining an application

12.—(1) A fee must be paid to the Welsh Ministers for determining an application (a “determination fee”) (*“ffî benderfynu”*).

(2) The determination fee is the aggregate of—

- (a) a fixed fee; and
- (b) any additional costs actually incurred by or on behalf of the Welsh Ministers in connection with determining the application.

(3) The fixed fee is the amount set out in the relevant row of column 3.

(4) The costs referred to in paragraph (2)(b) include—

- (a) any reasonable legal costs or other disbursements incurred or paid by or on behalf of the Welsh Ministers in connection with determining the application; and
- (b) costs incurred in reviewing and considering planning obligations⁽¹⁾.

(5) The Welsh Ministers may invoice the applicant for the fixed fee at any time after receiving the appointed person’s report and at reasonable intervals in respect of any additional costs actually incurred in connection with determining the application.

(6) Any fee due under this regulation must be received by the Welsh Ministers within the period of 21 days beginning with the date the relevant invoice from the Welsh Ministers is sent.

(7) If the applicant fails to pay any fee due under this regulation within the period specified in paragraph (6), the Welsh Ministers need take no further steps in relation to the application until payment has been received by the Welsh Ministers.

(8) If the applicant fails to pay any fee due under this regulation within the period of 12 weeks beginning on the expiry of the period specified in paragraph (6), the Welsh Ministers need take no further steps in relation

(1) For “Planning obligations” see section 106 of the 1990 Act. Section 106 was substituted by section 12(1) of the Planning and Compensation Act 1991 (c 3) and amended by section 174(2) of the Planning Act 2008 (c. 29). Other amendments are not relevant to these Regulations.

to the application and the application is deemed to be withdrawn.

(9) A determination fee remains payable notwithstanding the application being withdrawn before the Welsh Ministers determine the application.

(10) In this regulation “determining an application” (“*penderynu cais*”) includes determination of any secondary consents connected with the application where the decision on those consents is to be made by the Welsh Ministers.

Minister for Natural Resources, one of the Welsh
Ministers
Date

**SCHEDULE – Regulations 3(2), 4(3),
5(2), 7(2), 8(2), 10(2)(a)(i),
10(2)(a)(ii), 11(2), and 12(3)**

**Amounts Payable in Respect of Fees for
Developments of National Significance**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Regulation</i>	<i>Subject matter</i>	
Regulation 3(2)	Local planning authorities' pre-application services	£1,500
Regulation 4(3)	Hourly rate for planning officer	£55 plus value added tax
Regulation 5(2)	Notification fee	£580
Regulation 7(2)	Initial fee	£15,350
Regulation 8(2)	Report fee in the case of a local impact report required in respect of an application pursuant to section 73 of the 1990 Act (determination of applications to develop land without compliance with conditions previously attached)(1) where a local impact report has previously been submitted	£2,350
	Report fee in any other case	£7,750
Regulation 10(2)(a)(i)	Daily rate for an appointed person examining an application on the basis of written representations	£870
Regulation 10(2)(a)(ii)	Daily rate for an appointed person examining an	£920

(1) Section 73 was amended by sections 42 and 120 of, and paragraph 1 of Schedule 9 to, the Planning and Compulsory Purchase Act 2004. Other amendments are not relevant to these Regulations. See section 62D(6) and (7) of the 1990 Act for the circumstances in which an application under section 73 is to be treated as being a national significant development application.

	application by way of hearing or inquiry	
Regulation 11(2)	Variation fee	£520
Regulation 12(3)	Fixed fee for the Welsh Ministers determining an application	£14,700