

ENVIRONMENT, PLANNING AND TRANSPORT COMMITTEE

Date: Wednesday 9 January 2002
Time: 2.00 to 5.00 pm
Venue: Committee Room 3, National Assembly Building

REPORT BY MINISTER FOR ENVIRONMENT

COUNTRYSIDE

Section 74: List of Species and Habitats of Principal Importance in Wales

Section 74(2) of the Countryside and Rights of Way Act 2000 requires the Assembly to publish a list of the living organisms and types of habitat which in the opinion of the Assembly are of principal importance for the purpose of conserving biological diversity in Wales.

The Assembly is required to consult its statutory advisers on nature conservation – Countryside Council for Wales – before publishing the list. However, I want to seek the views of a wider audience before the list is finalised. Officials wrote to interested parties in December seeking views on a draft list of habitats and species recommended to us by CCW.

The draft list is based on the existing UK Biodiversity Action Plan (UK BAP) priority species and habitats relevant to Wales with additions. In summary, compared with the UK BAP the draft ‘Section 74’ list has:

Animals - 10 new species

Plants - 18 new species

Habitats - 5 new, and one change of name and scope

The consultation closes on 7 February, and I shall report back to the Committee when the responses have been analysed.

Countryside and Rights of Way Act 2000

I am very pleased that the first two sets of regulations under the Countryside and Rights of Way Act 2000 - on mapping and on local access forums - came into force on the 1st of January 2002. Consultation by CCW will now commence on the draft maps of access land across Wales, beginning with the Berwyn area in February 2002.

Attached to this report at Annex A is a draft consultation paper on the next step in the mapping process - the regulatory framework for the preparation of provisional and conclusive maps of access land the associated appeals procedure. I would welcome any comments from the Committee on the draft consultation paper.

ENVIRONMENTAL PROTECTION

Nantygwyddon Landfill Site – Investigations Report

A response to the points raised in the report will be presented by 10 January in order to meet the timetable set for taking this matter forward.

PLANNING

Planning Green Paper

The English Planning Green Paper issued for consultation on 12 December. It proposes a number of radical changes to the planning system designed to improve the way it operates.

Although based on the same legislation, the planning system in Wales is different from that in England. However, in Wales we also need a system that is responsive to the needs of users, and delivers fast, open, consistent decisions within a framework provided by clear, concise, up to date plans.

We are going to produce a separate consultation paper on the planning system in Wales. On 19 December I chaired a Forum at which the sort of changes which would be appropriate in Wales were discussed. The Forum meeting represented a wide cross section of organisations in the private, voluntary and public sectors with an interest in the planning system and we had a very positive, productive and constructive discussion of the sort of proposals to change the system which should be pursued in Wales.

We already have simpler arrangements for development plans and planning guidance in Wales, and we discussed ways of making local development plans more concise, relevant and useful tools in future to stimulate and guide development.

We also discussed a range of measures to improve the quality of development control, particularly the speed and certainty of decisions, customer service, access to information and the skills of those

involved in the decision making process.

The outcome of the Forum is being used to prepare a consultation document on proposals for change to the planning system in Wales, which I hope to issue for public consultation in mid January.

TRANSPORT

Rail

I met the new Chair of the Strategic Rail Authority, Richard Bowker, with the First Minister in Cardiff on the 7th January.

The tendering process for the Wales and Borders franchise has been re-started as announced on 19 December.

Transport Grant

A separate paper has been submitted as an Annex B to this report.

Bus Service Subsidy Agreements

On 17 October I reported that I was consulting on the draft Service Subsidy Agreement (Tendering) (Amendments) (Wales) Regulations 2001. The Regulations will revise - to 40% of an authority's total budget for supporting buses - the limit above which local authorities are required to invite tenders for subsidised local bus services. The consultation has now closed, and the proposals were welcomed without objection. The Business Committee is to consider the Regulations on 22 January, and Legislation Committee on 5 February. The intention remains to effect the changes from April 2002.

Safety Bill

A separate Report is at Annex C.

Sue Essex AM

Draft Consultation Paper

Proposals for Regulations on Provisional and Conclusive Maps of Open Country and Registered Common Land and Associated Appeals Procedure

Part A – Mapping Process

1. Introduction

1.1 The Countryside and Rights of Way Act provides a new statutory right of public access on foot to open country (defined as mountain, moor, heath and down) and registered common land.

In July 2001 the National Assembly consulted on the proposed regulations for the preparation of draft maps of open country and common land. This consultation paper covers the next stage of the mapping process. It includes the Assembly's proposals for new regulations governing :

- a. the production of provisional maps
- b. the handling of appeals against the showing of land as open country or registered common land on these provisional maps, and
- c. the production of conclusive maps (with any modifications agreed as a result of the appeals process).

2. Mapping process and appeals

2.1 The Countryside Council for Wales (CCW) is required under the Act to prepare and publish maps of open country and registered common land for the whole of Wales – land to which the new public right of access on foot will apply. They aim to publish these maps on a phased, area by area basis, commencing in the spring of 2002. CCW must consult widely on the draft maps and consider any representations received on them before issuing as provisional maps.

Once the provisional map for an area has issued, anybody with a direct legal interest in the land i.e. landowner, tenant or anyone with shooting or other rights over the land in question, may appeal to the National Assembly for Wales. The rights of appeal under the Act are restricted to three situations -

- that the land shown on the provisional map is not registered common land; or
- that it is not wholly or predominantly open country ;or
- where CCW has used its discretion, in order to align the boundary of the land shown on the provisional map with some physical feature, to include land which is not open country, that it ought not to have done so.

Once appeals received have been determined, the National Assembly may require modifications to be made to the relevant map (or direct the CCW to prepare a new draft map for the area concerned). Once the modifications have been made CCW will then issue the maps in conclusive (i.e. final) form.

The issue of the conclusive maps will conclude the mapping process. However the maps so produced will not generally be the ones walkers and others will wish to use for recreational and other purposes. The Assembly expects that the Ordnance Survey and others will utilise the information from CCW's statutory maps for inclusion in their leisure maps and guide books.

3. Preparation and Issue of provisional and conclusive maps

Proposal 1 – Form of Maps

3.1 Many of the provisions contained in the new regulations on the form and issue of draft maps (the Countryside Access (Draft Maps) Wales Regulations 2001) will be equally appropriate and applicable to the provisional and conclusive maps. This expectation is reflected in the proposals made in this paper.

For consistency it is proposed that provisional and conclusive maps should be prepared by CCW: -

- for the whole of Wales
- to a scale of not less than 1:10,000
- in electronic form (this will be the official version) but also reproduced in printed form (at a scale of not less than 1:25,000)
- with notation being adopted that is consistent with that used on the draft maps.

In line with the Countryside Access (Draft Maps) Wales Regulations 2001, a written statement describing any modifications to the draft map incorporated in the provisional map for an area (following consideration by CCW of representations) will be published by CCW with each of the provisional maps.

4. Issue of Provisional / Conclusive Maps

Proposal 2 – Issuing and inspection of Maps

4.1 It is important that provisional and conclusive maps are readily available for public inspection – and that the arrangements for securing this are widely known. To this end, and for consistency, we propose that the provisional and conclusive maps should be issued and made available for public inspection in a similar manner as is being arranged for the draft maps – ie:

- i. provisional and conclusive maps should be made available for inspection at the head office of the CCW, and at the relevant area office
- ii. these maps also to be made available at the head office of each relevant local authority and relevant National Park authority
- iii. relevant maps would also be sent to each of the prescribed organisations listed in Schedule 1 to the appended draft regulations.
- iv. extracts of the maps at 1:25,000 to be issued on request (and free of charge) to those with an interest in the land..
- v. Versions of the maps would also be made available, so far as is practicable, on the CCW's website.

To give sufficient opportunity for those with an interest to consider submitting an appeal, the regulations would specify that the draft maps and the subsequent provisional map for an area should be available for inspection at the offices listed at i. and ii. above for at least 3 months.

Proposal 3 - Public Notification

4.2 Again, mirroring the arrangements agreed for the publication of the draft maps, it is proposed that a public notice about the issuing of the provisional and conclusive maps should be published in :-

- i. at least one daily newspaper, at least one local newspaper and at least one farming publication relevant to the area covered by the map ;
- ii. and sent to each of the public libraries listed in Schedule 2 to the appended draft regulations for display.

4.3 Proposal 4

For the provisional maps the notice should contain the following information:

- i. date of issue of the provisional map
- ii. the area to which the provisional map relates
- iii. an explanation of the general effect of the public right of access conferred by the Act
- iv. where the provisional map will be made available for inspection

- v. how an individual with a direct interest in the land may appeal against the showing of land on the provisional map, and the time limit within which the appeal must be brought.
- vi. how any person who has a direct interest in the land shown on the provisional map as access land may obtain a reduced scale copy of the map (free of charge).

4.4 Proposal 5

The notice distributed / published in relation to the conclusive maps should include the following information:-

- i. date of issue of the conclusive map
- ii. the area to which the conclusive map relates
- iii. where the conclusive map will be made available for inspection
- iv. how any person who has a direct interest in the land shown on the conclusive map may request a reduced scale copy of the map (free of charge).
- v. an explanation of the general effect, in relation to the public right of access conferred by the Act, of inclusion of land on the conclusive map.

Proposal 6 – Notification of those with a direct interest in the land

4.5 So that they can be kept informed of developments, it is **proposed** that where CCW have received representations on a draft map from individuals with a legal interest in the land (landowner, tenant, etc), the CCW should notify them of the issue of the provisional map (providing a copy of the notice at paragraph 4.3 above).

Proposal 7 – Period for Inspection

4.6 It is **proposed** that the regulations should specify that a provisional map would be available for inspection at CCW's offices and relevant local authority / National Park offices from the date of issue until such time as the relevant conclusive map is published and for a further 3 months thereafter. This will give the public the opportunity to compare both the provisional and conclusive maps together (and to gauge the effects of the appeals process on specific boundaries of 'access land'). These maps would also be available on the CCW's internet site for the same length of time.

Part B - Appeals against Provisional Maps

5. Introduction

5.1 Under section 6 of the CROW Act any person having an interest in the land may, under certain circumstances, appeal to the National Assembly against the showing of land on a map in provisional form as registered common land or as open country.

5.2 Only individuals with a legal interest in the land may appeal and only on the basis

that the land shown on a provisional map : -

- i. is not registered common land or
- ii. is not wholly or predominantly open country or
- iii. is land which is not open country but has been included by CCW under its discretion to align the boundary of the land shown on the provisional map with some physical feature, and that CCW ought not to have done so.

It is important to note that there is not a right of appeal on the ground that land shown on a provisional map as registered common land was wrongly registered under the Commons Registration Act 1965.

5.3 The Assembly intends to base the main principles of the appeals procedure on those applying to planning appeals (under Section 78 of the Town and Country Planning Act 1990.) As with planning appeals, three basic types of appeal process are envisaged for appeals in relation to the provisional maps: determination via the written representation procedure, via a (informal) hearing, or (for the most complex cases), via a public local inquiry. The proposals made in this paper have been devised in consultation with the Planning Inspectorate - and are consistent with the plans for the handling of equivalent appeals in England. It is intended that the administration and determination of appeals under Part 1 of the Act should be undertaken on the Assembly's behalf by the Planning Inspectorate, Wales – or by any other body subsequently appointed by the Assembly.

6. Submitting an appeal

Proposal 8 – Period of appeal

6.1 To allow sufficient time for those with an interest in the open country and registered common land shown on provisional maps to appeal, it is proposed that the period for bringing an appeal against a provisional map should be 3 months from the date the provisional map was issued. However, at the Planning Inspectorate's discretion, a longer appeal period may be allowed in exceptional cases where the appellant can demonstrate that it was not reasonably practicable for him/her to submit the appeal within three months.

Proposal 9 – Information required to submit an appeal.

6.2 We do not propose to specify in regulations the precise format in which an appeal should be submitted under section 6 of the Act; but for consistency and ease of handling to make provision for a model form obtained from the Planning Inspectorate, Wales, which, if used, would satisfy the procedural requirements for initiating an

appeal. This would be made widely available via CCW, the Planning Inspectorate and other bodies such as the farming unions and the local authorities. The model form could be submitted in writing or in electronic format, but should include the following information: -

- i. the name and address of the appellant.
- ii. sufficient description of the land which is the subject of the appeal (preferably with a map) to enable the Planning Inspectorate to identify the land in question;
- iii. the nature of the appellant's interest in the land and ground of appeal;
- iv. a statement of the reasons why the appellant considers that the land should not be shown on the provisional map
- v. the preferred appeal procedure – either via written statements, hearing or inquiry. (If an inquiry is requested the reasons why this would be the appellant's preferred option should be given. This will assist the Inspectorate in determining whether the issues raised would be more appropriately considered at a hearing or at a more formal inquiry (see paragraph 7.1 below).
- vi. Welsh language – whether the appellant wishes the appeal to be dealt with through the medium of Welsh.

Proposal 10 – Notification to CCW

6.3 The regulations would require the Planning Inspectorate to send a copy of the completed form to the CCW so they are aware of the appeal.

Part C – Appeals Procedures

7. Handling of appeals

7.1 Appeal process - As noted in paragraph 5.3 above, it is intended that appeals under Section 6 of the Act should be determined in one of three ways:-

- i. After an exchange of written statements (provided that the appellant, CCW and the Inspectorate agree), or
- ii. After a hearing before a person appointed by the Assembly. (A hearing is a discussion of the appeal led by the appointed person in a more informal setting than a local inquiry. Hearings are not suitable for appeals which involve cross-examination of witnesses or which have generated such interest that large numbers of people, other than the main parties, may wish to appear).
- iii. After a local inquiry, also before a person appointed by the Assembly. (An inquiry is the most formal of the three procedures and witnesses may be cross-examined).

In many cases appellants may be content for their appeals to be determined via the written representations procedure. However, Section 7 of the Act gives each party to the appeal – the appellant and the CCW – the right to be heard if either party so wishes. In these cases it would be for the Planning Inspectorate to determine whether

a hearing or (more formal) inquiry would be more suitable. It may also be logistically sensible in certain circumstances – for example where a number of appeals relate to the same area of land on the provisional map – for the appeals to be considered via a joint hearing or inquiry (**proposal 11**). This would also be a matter for the Planning Inspectorate to determine.

7.2 Proposal 12 - Common procedure - The Assembly is keen to ensure that the appeals process minimises the risk of undue delays in reaching a decision, while at the same time ensuring that all material factors are properly considered. To that end we propose a common procedure for the initial stages of cases proceeding on the basis of written representation or by a hearing. However, we do not believe a common procedure would be appropriate for appeals being handled at an inquiry because, by their nature, inquiries are more involved. Again, however, the aim would be to ensure that such appeals are processed within a reasonable timescale.

Proposal 13 – Procedure for written appeals and hearings

7.3 The common procedure envisaged for the initial stages of cases to be determined by written statements or by a hearing would comprise the following steps (all to be covered in the regulations) :

- i. The Planning Inspectorate to notify the appellant and CCW of a "starting date" for the appeal from which the prescribed timescales proposed below would run. Prior to giving notice the Inspectorate must be satisfied that they have received all the documents from the appellant required to enable them to proceed with the appeal.

Within two weeks of the "starting date"

- ii. CCW to notify third parties to notify third parties of the appeal and providing the information under 8.1b below (inviting those who made representations on the draft maps to decide if they wanted those representations to be disregarded or if they wished to submit additional representations).
- iii. CCW to submit its statement of case to the Inspectorate. This may be an outline statement at this stage – if so, CCW should indicate, when submitting it, that a full statement is to be sent within six weeks of the starting date.
- iv. At the same time as it submits its case under paragraph iii above, CCW should indicate its choice of procedure (ie handling via written representations, hearing or inquiry – final decision to rest with the Inspectorate) and provide any additional information which may be required, for example copies of representations received by CCW in respect of the draft map. CCW should send a copy of its statement, the other information and documents to the appellant at the same time as the Inspectorate.

Within six weeks of the starting date

- v. The appellant and CCW to submit any further statements to the Inspectorate.
- vi. All third parties to submit any representations to the Inspectorate.
- vii. The Inspectorate should send the appellant and CCW copies of relevant statements received under paragraph vi above; any additional information required by the Inspectorate under paragraph 7. 4 below; and copies of any representations received from the people or organisations notified at paragraph iii above and from any other third parties.

Within 9 weeks of the starting date

- viii. The appellant and CCW to submit to the Inspectorate any comments on each other's statement or any representations from third parties sent to them at paragraph vii above.

Provision of further information by the appellant or CCW

7.4 The regulations would also provide the Inspectorate with the power to require further information from:-

- the appellant in respect of matters raised in the form of appeal and any further statement which has been provided at paragraph 7.3 v above
- CCW in respect of its statement provided at paragraph 7.3 iii above or if this were an outline statement, in respect of its statement at paragraph 7.3 v above.
- from third parties as appropriate

Proposal 14 - Inspection of Land

7.5 Where an appeal is brought on the grounds that land shown on a provisional map is wrongly shown as open country, an inspection of the land concerned would normally be undertaken, where that would assist in determining the appeal. However, where the appeal is brought on the ground that land shown as common land is not registered common land, there may not be a need for a site visit - a visit to the offices of the local authority to inspect the register of common land may be more appropriate. It is therefore proposed that the regulations should provide:

- i. for the Inspectorate to arrange for an inspection of the land if it is considered necessary
- ii. require the Inspectorate to arrange a site inspection if asked to do so by the appellant or CCW
- iii. in either of the above require the appellant and CCW to be given an opportunity to be present during the visit (although there would be no discussion of the merits of the case during the

visit).

This would apply irrespective of the method agreed for the handling of individual appeals.

Proposal 15 - Assessors

7.6 The Inspectorate may consider that an appeal raises complex or technical issues on which it would be helpful to have specialist advice. In such circumstances we propose that the Inspector would be able to appoint an assessor to assist him/her in these matters. It is proposed (proposal 15) that the regulations should require the Inspectorate to notify the name of the assessor to the appellant and CCW and the matters on which the assessor is to advise the Inspector.

8. Advertising an appeal

Proposal 16 - third party representation

8. 1 As in the case of planning appeals, the Assembly believes that members of the public should be given the opportunity to make representations on any appeal brought under section 6 of the Act. Accordingly it is proposed that the regulations should provide that :

- a. once notified by the Planning Inspectorate that an appeal has been lodged, the CCW should inform the Inspectorate of the name and address of any person who made a representation to it about the showing, or failure to show, the land which is the subject of the appeal on the relevant draft map; and
- b. for the CCW then to give notice of the appeal to those who had originally made representations.

8.2 As a minimum the notice from CCW would contain the following information:

- i. the name of the appellant and sufficient information to identify the location and extent of the land.
- ii. the statutory grounds of appeal (i.e. under which section of the Act that the appeal was brought (section 6(2) or section 6(3)).
- iii. a statement explaining that CCW is required to send to the Planning Inspectorate and the appellant a copy of any representations made to the CCW in respect to the land concerned and that representations will be open to public inspection.
- iv. a statement explaining that if the person wishes the representation to be disregarded for the purposes of the appeal, the Planning Inspectorate should be informed within the prescribed time.
- v. a statement explaining that further representations may be made to the Planning Inspectorate, giving the address to which they should be sent, and the period within

which they should be made.

Proposal 17 – Availability of documentation

8.3 To assist public understanding, the CCW should provide an opportunity for anyone to inspect and where practicable to take copies of documents relating to the appeal including:

- i. CCW's statement of case and accompanying documents, any written comments, information or other documents sent by CCW to the Planning Inspectorate.
- ii. any other statement of case, comments, documents or information sent to CCW.

Proposal 18 – Giving notice of hearings/inquiries

8.4 The Assembly expects that as appeals under Section 6 are not normally likely to raise numerous issues or complicating factors, many appellants may be content for their appeal to be determined via written representations. However, where a hearing or inquiry is arranged, it is clearly important that those with an interest are given adequate notice. To this end it is proposed that CCW should publish a notice of any hearing or inquiry in one or more newspapers circulating in the area covered by the appeal and to send a notice to any persons specified by the Planning Inspectorate (for example, anyone who made representations to the Planning Inspectorate in respect of the appeal). A copy of the notice should also be available on the CCW website.

8.5 The notice should contain the following details:-

- i. the date, time and place of the hearing or inquiry
- ii. the land which is the subject of the appeal
- iii. the statutory grounds of appeal
- iv. where copies of appeal documents may be inspected
- v. that those requiring facilities for the disabled should contact CCW to ensure that such provision is made
- vi. that those wishing to appear and give evidence in Welsh should contact CCW to ensure the provision of translation facilities

9. Decisions on appeals

Proposal 19 – Decisions – written procedure cases

9.1 Where the appellant, CCW and the Inspectorate have agreed that the appeal should be determined on the basis of written representations then, on completion of the procedure outlined above the Inspectorate would proceed to a decision. In doing so the

Inspectorate should be able to: -

- i. Disregard any further information from the appellant or CCW that was not submitted within 9 weeks of the starting date unless such information had been requested by the Inspectorate.
- ii. Take into account only representations, statements and any other information which have been submitted within the relevant deadlines.

Proposal 20 – Decisions – Hearing cases

9.2 Where it is decided to proceed by way of a hearing, in addition to the procedures outlined in paragraph 7.3 it is proposed that the following additional requirements be specified in the regulations :-

- i. A requirement for the Inspectorate to notify the appellant and CCW of the name of the Inspector.
- ii. A requirement for the Inspectorate to fix a date for the hearing within 12 weeks of the starting date or the earliest practicable date after that period.
- iii. A requirement for advertising any hearing or inquiry (in line with paragraph 8.4 above)
- iv. A power for the Inspectorate at any time before or during a hearing (and for the Inspector during a hearing), to decide whether an inquiry instead of a hearing should be held if requested to do so by one of the two main parties and after consultation with the other main parties.
- v. A power for the Inspector, during a hearing and after consultation with the appellant and CCW, to close the proceedings and arrange for an inquiry if he decides that it is more appropriate.
- vi. Provision for the appellant and CCW to be entitled to appear at a hearing and power for the Inspector to permit any other person to appear.
- vii. A power for the Inspector to determine the procedures to be followed at a hearing (while following the guidance in Annex 2 of Welsh office Circular 7/97)

Proposal 21 – Decisions – Inquiry cases

3. In line with the procedure for planning appeals, we propose that regulations for inquiries should be based on the rules of procedure set out in Welsh Office Circular 7/97. These include similar timescales for the submission of documents as proposed in the common procedure above but include additional stages - for example a power for the Inspectorate to require third parties who have notified them they would like to appear at the inquiry to provide a statement.

9.4 **Other key provisions include:-**

- i. A requirement for the two main parties to prepare and submit to the Inspectorate a statement

of common ground – i.e. the matters on which they agree or disagree. This would enable the Inspector to identify the key points to be addressed and reduce the time needed for the inquiry.

- ii. A requirement for either of the main parties, if either intends to read a proof of evidence at the inquiry, to provide copies in advance.
- iii. Provision allowing the appellant and CCW to cross-examine persons giving evidence. Otherwise cross-examination to be at the discretion of the Inspector who would, in any event, have discretion to refuse to allow cross-examination which he considered to be irrelevant or repetitious.
- iv. Provision for a pre-inquiry meeting if this appears to the Inspectorate or the Inspector conducting the appeal to be necessary.

Proposal 22 – Procedures after a hearing or inquiry

9.5 In line with the existing procedures on planning appeals, it is proposed that the regulations make provision for the Inspector :

- i. To be able to disregard any written representations, evidence or other documents received after a hearing or inquiry has been closed.
- ii. To be required to consult the appellant and CCW if he is proposing to consider any new evidence not raised at the hearing or inquiry and which he believes to be material to the decision. Also to allow them to make written statements or ask for the hearing or inquiry to be re-opened.
- iii. To be able to re-open a hearing or inquiry in the circumstances at paragraph ii above and to be required to do so if either the appellant or CCW request it.

Other matters to be covered

Proposal 23

9.6 Regulations should make provision for the notification of decisions made by the Assembly or an Inspector on appeal under section 6 of the Act. In each case notification should be in writing. To this end it is **proposed that the regulations should require the Inspector to notify his/her decision and the reason for it to the appellant, CCW and any person who made representations in respect of the appeal and asked to be notified of the decision. In the case of a hearing or inquiry, the regulations would require the inspector :**

- i. to notify his decision to the main parties and any person who appeared at the hearing or inquiry and asked to be notified of the decision;
- ii. to enable anyone entitled to be notified of the decision to inspect any documents listed in the notification on application to the Assembly.

9. Costs

Proposal 24 - Costs

10.1 In most cases, each side will normally be expected to bear its own costs in the proceedings. But the Assembly **proposes** that in cases where an inquiry or hearing is held (or in certain circumstances where one is arranged, but not held), costs may be awarded, on application, where it can be shown that any party has acted unreasonably in their conduct of the proceedings. This would include the costs incurred in making the appeal, in preparing and submitting representations or attending the hearing or inquiry. This follows the guidance on the award of costs in planning appeal cases set out in Welsh Office Circular 23/93 (reading references to planning appeals as references to mapping appeals, and references to the local planning authority as reference to CCW.) In line with this the power to award costs applies only in hearing or inquiry cases and not for cases determined by written representations.

Part D

11. Draft regulations

A first draft of the regulations relating to Parts A and B of this paper is attached. Further work is proceeding on the regulations, particularly on those relating to Part C, based on the framework set out in that part of this paper. The draft regulations will be developed further in the light of the outcome of this consultation exercise. We hope, however, that sight of this initial draft set of regulations will assist the consultation process.

12. Comments

Views on the proposals made in this paper should be sent to Angharad Huws in Countryside Division, National assembly for Wales, Cathays Park, Cardiff CF10 3NQ – by [8 weeks from date of issue]. If you would like to discuss any matter in this paper before submitting comments please contact :

- a. Mapping issues – Gerry Quarrell or Angharad Huws on 029 20 82 3557 or 5168
- b. Appeals procedure – Bob Evans on 029 20 835358

Further copies of this paper can be obtained from Angela Forster in Countryside Division (tel 029 20 80 1398). The text is also published on the National Assembly's

website at [to add].

January 2002 Countryside Division

National Assembly for Wales

Annex B

TRANSPORT GRANT BIDS 2002-03

1. This paper is presented to the Committee for information. It updates the position on my consideration of the bids received from Local Authorities for capital funding in 2002-03.
2. On 7 March 2001 the Committee considered paper EPT-04-05 (p5) concerning the categories of project which should be invited to bid for Transport Grant Support in 2002-03. These were determined as follows:
 - a. preparation costs support for additional infrastructure schemes, costing over £5 million, contributing to a wider community regeneration programme;
 - b. road schemes currently receiving support in line with the indicative start dates in the 5-year programme announced on 11 January 2001;
 - c. package schemes costing over £1 million currently receiving support, in line with indicative allocation and decision issued with 2001-02 settlement letters;
 - d. new package schemes that address cross-border transportation issues, presented as part of an overarching partnership or consortium strategy including innovative proposals for public transport; and
 - e. Safe Routes to School projects. Priority will be given to those projects that demonstrate enhancement of local communities generally, paying particular regard to road safety issues.
3. The closing date for receipt of bids was 31 August 2001. 160 bids have been received, seeking support in 2002-03 of £131 million, of these the majority are in respect of existing projects seeking continued funding. 21 new bids for package support and 14 bids for additional infrastructure schemes are seeking support for the first time.
4. The Committee will recognise that most transport investments take some time to plan and deliver. My officials work closely with local authorities as part of the bidding process and advise me on the lead in times and funding needed to enable projects to be brought forward in future years. Local authorities need to present a formal annual bid for funding, although for many of the schemes already receiving support from the Welsh Assembly Government future funding has already been promised – contracts could not be let without such assurances. It is for this reason that the majority of the budget for 2002-03 is shown in the Table below as already earmarked.
5. The Transport Grant budget for 2002-03, as approved by the National Assembly for Wales on 22 November, is £63.8m. Of this budget some £16.9m represents expenditure on committed

road schemes and on the purchase of land for road schemes where construction is being funded through Private Finance Initiative contracts. A further £28m has already been promised to local authorities to support continuing implementation of integrated transport packages.

6. My Transport Grant announcement on 11 January 2001 identified a five-year programme of support for the implementation of major rail and road investments. Recent events in the rail industry have created uncertainty about timing of the rail investments. However, The Vale of Glamorgan project is going ahead and some £7.2 million of the earmarked £9.4 million for rail projects in 2002-03 will be required for that alone.

7. There are 30 bids for Safe Routes to Schools schemes. £2.7 million has been earmarked to support successful projects.

8. As you will appreciate my major task is to decide which of the bids for new projects to support. I will announce my decisions within 2 weeks of this meeting. In considering which projects to support I need to take into account the costs of projects in future years. I am determined that the Transport Grant programme should not again have a large number of expensive infrastructure schemes receiving support for design work when there is no realistic possibility of funding construction in the short or medium term. I am also conscious of the need for local authorities to actually demonstrate that some of the integrated package investments are making a difference before I support more similar expenditure. I am also keen to consider bids for innovative approaches to public transport accessibility, which, if they prove successful, could produce tailored solutions to the problems of accessibility within Wales.

9. In considering my final allocations I will, of course, take account of the need to support local authorities across Wales in their efforts to build sustainable communities by fostering economic regeneration and delivering integrated transport and hope to be able to announce allocations which will bring benefits across the whole of Wales and which represent a balance between major infrastructure investments and public transport investments.

Forward Commitments – Updated 1 November 2001 (£ million)

	2002-03 bids	2002-03 indicative expenditure	2003-04 indicative expenditure	2004-05 indicative expenditure	2005-06 indicative expenditure
Draft budget		63.8	72.8	72.8	72.8
Package delivery	82.3	28.0	18.6	0	0

Rail projects in the 5 Year forward Programme	}	9.4	17.0	18.0	4.0
Current estimated costs of Committed Road Schemes	16.9	16.9	16.1	12.6	5.4
Road projects in the 5 Year forward Programme	23.3	3.0	10.0	19.0	42.0
Safe Routes To School	5.0	2.7	2.7	2.7	2.7
Major infrastructure schemes	3.8	0	0	0	0
Total of commitments		60.0	64.4	52.3	54.1
Balance Remaining		3.8	8.4	20.5	18.7

Annex C

Safety Bill: Road Safety Measures

1. Resolving anomalies between Great Britain and Northern Ireland driving licences

The proposal would ensure a) that a provisional driving licence issued by the Northern Ireland authorities is recognised in Great Britain only as a provisional licence and not, as now, as a full licence; and b) that any individual, on application for a Great Britain driving licence, would have to declare any Northern Ireland driving licence already held or applied for and any current disqualification from driving imposed on them by the Great Britain or Northern Ireland authorities. The Northern Ireland administration intend to put reciprocal measures before their Assembly.

2. Drivers' hours enforcement

The proposal is to amend the Transport Act 1968 to clarify the powers of inspectors to enter vehicles and premises to inspect and remove tachograph records. Doubts about the existing powers

for enforcing drivers hours in section 99 of that Act have been raised as a result of a recent drivers' hours case handled by the Deputy Traffic Commissioner for Scotland. At the same time the penalty for failing to produce charts or records or obstructing an enforcement officer in the course of carrying out their duties would be increased from level 3 (£1,000) to level 5 (£5,000).

3. Modernisation of systems for driver and rider training and testing

- a. **Inspecting and certifying driving test vehicles** - Candidates are required to present for test with a vehicle that meets certain minimum criteria – in terms of length, weight, power-output or speed capabilities. This is to ensure they take a test in a vehicle that is representative of the whole class of vehicles they would gain entitlement to drive. Test vehicle requirements, particularly for vehicle and trailer tests, are to be increased in line with European Legislation. The proposal is to introduce powers to certify and inspect vehicles to ensure they comply with those requirements.
- b. **Prescribing standards for vehicles in compulsory training courses** - Similarly, it is proposed to give powers to certify and inspect all vehicles to ensure they comply with any minimum requirements specified for compulsory training courses.
- c. **Recovering costs of appointing and supervising delegated driving examiners** - The costs of providing Driving Standards Agency (DSA) examiner training courses and DSA supervision for non DSA examiner are currently met through a fee charged when theory and practical test examiners are supplied with test result certificates. This is inefficient and unfair. It is proposed to enable a separate charge to be made for the training courses and supervision visits.
- d. **More flexibility to driving schools to book and cancel test appointments** - The proposal is to make provision for driving schools to make and rearrange test appointments – the current legislation envisages that those transactions are undertaken only by the candidates.
- e. **Recovering costs of remarking theory test papers** - Some theory test candidates ask for their papers to be remarked. At present the costs are recovered from the theory test fee for all candidates. The proposal is to enable the introduction of a charge for a remarking service – with the fee being refunded if the marking is found to be incorrect.
- f. **Administration fees for rearranging appointments and refunding test fees** - The proposal would enable DSA to make an administration charge if a person rearranges an appointment for a practical or theory test. Currently a significant proportion of such tests are rearranged for which DSA incurs administrative costs, which are recovered in the generality of the fees for those tests. There is therefore an element of unfair cross-subsidisation by those who do not make alterations to their test appointments.
- g. **Prescribing how quickly successful candidates apply for a full licence** -

Currently the Road Traffic Act gives successful test candidates up to 2 years to encash their pass certificate. The proposal is to prescribe maximum and/or minimum periods between passing a driving test and applying for a full driving licence. A shorter maximum period could be used to encourage speedy upgrading of provisional licences to full licences. A prescribed minimum period could be used if it was decided to introduce a probationary period following a successful test before a new driver could obtain a full licence.

h. **Retest provisions** - It is proposed to amend the provisions on the "appropriate test" which a person must pass to lift a disqualification, to allow different "appropriate tests" for different driving categories, and the lifting of disqualification at different times for different categories.

i. **Imposing conditions on full licences** - The proposal is to allow the Secretary of State to make regulations to impose conditions on a full licence. (He already has this power for a provisional licence.) This would allow for example the introduction of a requirement for newly qualified drivers to display "P" plates for a period.

j. **Misuse of training logbooks** - Training logbooks are a key element in developing a more structured approach to learning to drive. The proposal is to ensure that the regulations can control the fraudulent production of evidence purporting to show that training has been undertaken.

4. Improved Arrangements for driving instructor registration

a. **Registering different types of instructors** – The proposal is to enable the introduction of controls which distinguish between different types of driving instructor by reference to the trainees they are instructing (learner, fleet, advanced), to the characteristics and circumstances of the instruction (theory, practical off road, practical on road) and to the type of motor vehicle. Currently, registration is required for those giving paid instruction in the driving of motor cars and, in the context of the statutory training scheme for learner riders, those giving paid motorcycle instruction.

b. **Driving schools** - Most car driving schools are one-person operations, but driving schools for other types of vehicles (motorcycle, lorry, bus) usually comprise more than one person. The proposal is to enable the accreditation of the training schools as well as the individual instructors – in terms of their training facilities. This is already done in the context of the statutory training course for learner riders.

c. **Ensuring franchisees as well as employees are regulated** - This is to ensure that the driving instruction legislation pays proper regard to the franchiser and franchisee relationship, where instructors operate a franchise of, rather than being employed by, a driving school.

d. **Exemptions from driving instructor requirements** - At present specific groups are exempted from the requirement to be registered driving instructors. The proposal is to introduce a power to prescribe in regulations classes of persons who would be exempt, and any conditions attached to those exemptions.

e. **Qualifying exam for driving instructors** - The proposal is to amend the prescriptive requirement to pass a three part test (written examination, practical test of ability and fitness to drive and practical test of ability and fitness to instruct) in order to qualify as a driving instructor. Instead, we propose powers to prescribe the qualification process in Regulations. which might include a multi-part test. This would allow the flexibility needed to keep the test up to date with measures to improve standards, such as the introduction of hazard perception training, and take account of the possibility of instructors seeking to be registered in more than one sector of the Register.

f. **Training for driving instructors** - To improve the way driving instructors are trained and supervised, it is proposed to introduce powers to

- set down the circumstances in which partially qualified instructors might be allowed to offer paid instruction;
- require driving instructors to take prescribed courses of initial training and professional development;
- require that training to be completed satisfactorily before a qualifying test, before registration, or in certain circumstances; and
- prescribe the content of the instructor training; require the use of logbooks and quality assure the organisations training instructors.

g. **Publishing performance data** – The proposal is to enable the Registrar to provide better information to potential customers about individual driving instructors (at the moment they can only find out whether an instructor is registered or holds a Trainee Licence). The information provided to potential customers would include details about the services the instructor offers and measurements of their performance (e.g. test grades, pupil pass rates, Continued Professional Development achievements) but not sensitive personal data. The Registrar would be able to make reasonable charges for providing this information.

h. **Duty to consult before making regulations** - The controls on the regulation of professional driving instructors are specifically excluded from the requirement to consult interested parties before making regulations. In practice, the Driving Standards Agency always consults interested parties, and so it is proposed to remove this exclusion from the duty to consult.

i. **Improved provisions for collecting registration fee** - Driving instructors are registered for 4 years and a registration fee may be charged at the beginning of this registration period. The proposal is to separate the timing of the collection of the registration fee from the registration period, so that the fee can be paid in instalments,

as requested by the industry.

j. Administration fees for rearranging appointments and refunding test fees - The proposal would enable DSA to make an administration charge if a person rearranges an appointment for a qualifying exam or a check-test. Currently, a significant proportion of such tests are rearranged for which DSA incurs administrative costs, which are recovered in the generality of the fees for those tests. There is therefore an element of cross-subsidisation by those who do not make alterations to their test appointments, this is unfair.

k. Rehabilitation period before reapplying to join register - Where an application to join the register is refused, we propose to allow a Registrar to prevent a person from reapplying within a specified time (not exceeding 4 years).

l. More flexible regulation making powers, particularly fee charging powers - Regulations are proposed to prescribe different arrangements for different circumstances, in particular a fee structure for the Register that takes account of differing methods of financial transaction.

5. Improvements to the driver licensing system

a. Fee for replacement driving licences - When a person changes name or address they have to surrender their licence to the DVLA, which grants a new licence. DVLA can not charge for issuing a replacement licence and so the costs are met from other licence transactions for which a fee can be charged. The proposal is to allow a fee to be charged for issuing a replacement driving licence.

b. Fee for renewing a photocard licence - Holders of photocard licences must renew the photo every 10 years. The proposal is to allow a charge for the issue of a new photocard licence after this 10-year period has expired.

c. Requiring drivers to apply for photocard licences - If a paper licence holder notifies DVLA that their licence has been misplaced, destroyed or is out of date, DVLA amends the Driver Record and sends an application pack for a photocard licence. Those who do not respond (about 50,000 a month) impede the smooth transition to photocard licences, but they are not committing any offence. The proposal is to require a person to apply for a photocard licence in these circumstances.

d. Recalling paper licences – The proposal is for a power to recall paper licences and ensure a full transfer to photocard licences. This would only be used when the bulk of licences in issue were already photocard licences.

