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WELSH STATUTORY INSTRUMENTS

2006 No. 3099 (W.283)

TOWN AND COUNTRY PLANNING, WALES

The Town and Country Planning (Environmental Impact Assessment) (Amendment) (Wales) Regulations 2006

Made - - - - - *21 November 2006*

Coming into force - - - - - *30 November 2006*

The National Assembly for Wales, being designated by the European Communities (Designation) (No.3) Order 2000(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of those powers, and in exercise of the powers conferred upon the Secretary of State by section 71A of the Town and Country Planning Act 1990(3) and which are now exercisable in relation to Wales by the National Assembly for Wales(4), and all other powers enabling it in that behalf, makes the following Regulations:

Title, commencement, interpretation and application

1.—(1) The title of these Regulations is the Town and Country Planning (Environmental Impact Assessment) (Amendment) (Wales) Regulations 2006 and they come into force on 30 November 2006.

(2) In these Regulations, a reference to a regulation is a reference to that regulation in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (“the 1999 Regulations”)(5).

(3) These Regulations apply in relation to Wales.

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- (1) S.I. 2000/2812, article 2 and Schedule 1, paragraph 2.
(2) 1972 c. 68. The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51).
(3) 1990 c. 8. Section 71A was inserted by the Planning and Compensation Act 1991 (c. 34), section 15.
(4) See article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as varied by article 4 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253) (W.5).
(5) S.I. 1999/293 as amended by S.I. 2000/2867.

Amendment of the 1999 Regulations

2. The 1999 Regulations are amended in accordance with regulations 3 to 19 of these Regulations.

Amendment of regulation 2

3. In regulation 2(1) (interpretation)—
 - (a) after the definition of “the 1995 Act” insert—

““any other information” means any other substantive information relating to the environmental statement and provided by the applicant or appellant as the case may be;

“any particular person” includes any non-governmental organisation promoting environmental protection;”;
 - (b) in the definition of “the consultation bodies”, after sub-paragraph (b)(iii) delete “and” and, after sub-paragraph (b)(iv), insert—

“and

 - (i) other bodies designated by statutory provision as having specific environmental responsibilities and which the local planning authority or the Secretary of State, as the case may be, considers are likely to have an interest in the application;”;
 - (c) in the definition of “environmental information”, after “further information” insert “and any other information”;
 - (d) in the definition of “exempt development”, delete “which comprises or forms part of a project serving national defence purposes or”;
 - (e) after the definition of “the land”, insert—

““by local advertisement”, in relation to a notice, means—

 - (a) by publication of the notice in a newspaper circulating in the locality in which the land to which the application or appeal relates is situated; and
 - (b) where the local planning authority maintains a website for the purpose of advertisement of applications, by publication of the notice on the website;”.

Amendment of regulation 4

4. In regulation 4 (general provisions relating to screening), for paragraph (4) substitute—

“(4) The Secretary of State may direct that these Regulations shall not apply to a particular proposed development specified in the direction in accordance with Article 2(3) of the Directive (but without prejudice to Article 7 of the Directive).

(4A) Where a direction is given under paragraph (4), the Secretary of State must—

 - (a) send a copy of any such direction to the relevant planning authority;
 - (b) make available to the public the information considered in making the direction and the reasons for making the direction;
 - (b) consider whether another form of assessment would be appropriate; and
 - (c) take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public.”.

Amendment of regulation 7

5. In regulation 7 (application made to a local planning authority without an environmental statement), after paragraph (2) insert—

“(2A) Where the local planning authority is aware that any particular person is or is likely to be affected by, or has an interest in, the application and who is unlikely to become aware of it by means of a site notice or by local advertisement, the local planning authority shall notify the applicant of any such person.”.

Amendment of regulation 8

6. In regulation 8 (application referred to the Secretary of State without an environmental statement), after paragraph (3) insert—

“(3A) Where the Secretary of State is aware that any particular person is or is likely to be affected by, or has an interest in, the application and who is unlikely to become aware of it by means of a site notice or by local advertisement, the Secretary of State shall notify the applicant of any such person.”.

Amendment of regulation 9

7. In regulation 9 (appeal to the Secretary of State without an environmental statement), after paragraph (4) insert—

“(4A) Where the Secretary of State is aware that any particular person is or is likely to be affected by, or has an interest in, the application and who is unlikely to become aware of it by means of a site notice or by local advertisement, the Secretary of State shall notify the appellant of any such person.”.

Amendment of regulation 13

8. In regulation 13 (procedure where an environmental statement is submitted to a local planning authority)—

- (a) in paragraphs (1) and (2)(a), for “three” substitute “two”; and
- (b) delete “and” at the end of paragraph (2)(b) and the full stop at the end of paragraph (2)(c) and, after paragraph (2)(c), insert—

“; and

- (d) where the planning authority is aware that any particular person is or is likely to be affected by, or has an interest in, the application and who is unlikely to become aware of it by means of a site notice or by local advertisement, send a notice to such person containing the details set out in regulation 14(2)(b) to (j) and the name and address of the relevant planning authority.”.

Amendment of regulation 14

9. In regulation 14 (publicity where an environmental statement is submitted after the planning application), after paragraph (2) insert—

“(2A) Where the applicant has been notified under regulation 7(2A), 8(3A) or 9(4A) of such a person as mentioned in any of those paragraphs, the applicant shall serve a notice on every person of whom the applicant has been so notified; and the notice shall contain the information specified in paragraph (2), except that the date specified as the latest date on which the documents will be available for inspection shall not be less than 21 days later than the date on which the notice is first served.”.

Amendment of regulation 19

- 10.** In regulation 19 (further information and evidence respecting environmental statements)—
- (a) for paragraph (2), substitute—
 - “(2) Paragraphs (3) to (9) shall apply in relation to further information and any other information except insofar as the further information is provided for the purposes of an inquiry or hearing held under the Act and the request for the further information made pursuant to paragraph (1) stated that it was to be provided for such purposes;”;
 - (b) in paragraph (3), after “pursuant to paragraph (1)” insert “or any other information”;
 - (c) in paragraphs (3)(d) to (g) and (j) and (4), after “further information” insert “or any other information”;
 - (d) in paragraph (5)—
 - (i) after “further information” insert “or any other information”, and
 - (ii) for “three” substitute “two”;
 - (e) in paragraph (6), after “further information” insert “or any other information”;
 - (f) in paragraph (7)—
 - (i) after “under paragraph (1)” insert “or any other information is provided”, and
 - (ii) after “further information” insert “or any other information”; and
 - (g) in paragraphs (8) and (9), after “further information” insert “or any other information.”.

Amendment of regulation 20

- 11.** In regulation 20 (availability of opinions, directions etc. for inspection), in paragraph (1)(g) after “further information” insert “and any other information”.

Amendment of regulation 21

- 12.** In regulation 21 (duties to inform the public and the Secretary of State of final decisions)—
- (a) in paragraph (1)(b), for “publishing a notice in a newspaper circulating in the locality in which the land is situated” substitute “local advertisement”;
 - (b) in paragraph (1)(c)(ii), after “on which the decision is based” insert “including, if relevant, information about the participation of the public”; and
 - (c) delete the word “and” at the end of paragraph (1)(c)(ii) and the full stop at the end of paragraph (1)(c)(iii) and, after paragraph (1)(c)(iii), insert—
 - “; and
 - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.”.

Amendment of regulation 22

- 13.** In regulation 22 (development by a local planning authority), in paragraph (c) of regulation 13(1) as substituted by paragraph (1)(e), for “three” substitute “two”.

Amendment of regulation 25

- 14.** In regulation 25 (unauthorised development)—
- (a) in paragraph (4), after sub-paragraph (b) add—

“and

- (c) any particular person who is or is likely to be affected by, or have an interest in it.”;
- (b) in paragraph (12)(b), after “any further information,” insert “any other information”;
- (c) in paragraph (15), after “paragraph 14” insert “and any other information”;
- (d) in paragraph (16)—
 - (i) after “paragraph (13)(a)” insert “or any other information”,
 - (ii) for “in a local newspaper circulating in the locality in which the land is situated” substitute “by local advertisement”, and
 - (iii) in sub-paragraphs (c), (d) and (e), after “further information” insert “and any other information”;
- (e) in paragraph (17), for “in a named newspaper” substitute “by local advertisement”.

Amendment of regulation 27

15. In regulation 27 (development in England and Wales likely to have significant effects in another EEA State)—

- (a) in paragraph (4)(a), after “in paragraphs (2) and (3)” insert “and any further information and any other information”;
- (b) in paragraph (6)(b), after “on which the decision is based” insert “including, if relevant, information about the participation of the public”.

Amendment of regulation 28

16. In regulation 28 (projects in another EEA State likely to have significant transboundary effects)—

- (a) in paragraph (1), after “Article” insert “7(1) or”;
- (b) delete “and” at the end of paragraph (2)(a) and the full stop at the end of paragraph (2)(b) and, at the end of paragraph (2)(b), insert—

“; and

- (c) so far as the Secretary of State has received such information, notify those authorities and the public concerned of the content of any decision of the competent authority of the relevant EEA State; and in particular—
 - (i) any conditions attached to it,
 - (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public, and
 - (iii) a description of the main measures to avoid, reduce and, if possible, offset any major adverse effects that have been identified.”.

Amendment to Schedule 1

17. In Schedule 1, after paragraph 20 add—

“**21.** Any change to or extension of development listed in this Schedule where such a change or extension itself meets the thresholds, if any, or description of development set out in this Schedule.”.

Amendment to Schedule 2

18. In Schedule 2, in paragraph 13(a) in column 1 (description of development), after “in Schedule 1” insert “(other than a change or extension falling within paragraph 21 of that Schedule)”.

Amendment of the Town and Country Planning (General Development Procedure) Order 1995 (“the 1995 Order”)(6)

19. In article 1(2) of the 1995 Order, for the definition of ““environmental information” and “environmental statement”” substitute—

““EIA development”, “environmental information” and “environmental statement” have the same meanings respectively as in regulation 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999;”.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(7)

21 November 2006

D. Elis-Thomas
The Presiding Officer of the National Assembly

(6) S.I. 1995/419.
(7) 1998 c. 38.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to Wales, amend the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999/293) (“the 1999 Regulations”) by implementing article 3 of Directive 2003/35/EC of the European Parliament and Council of 26 May 2003 (OJ L 156, 25.6.2003, p.17 and referred to in these Regulations as “the Directive”) insofar as it effects public participation in the decision-making process for applications and appeals relating to development for which environmental impact assessment is required.

The Directive provides for public participation in respect of the drawing-up of certain plans and programmes relating to the environment and amends Council Directive 85/337/EEC (OJ L 175, 5.7.1985, p.40) (as amended by 97/11/EC (OJ L 73, 14.3.1997, p.5) and 96/61/EC (OJ L 257, 10.10.1996)) with regard to public participation and access to justice.

Regulation 3 amends the existing definitions of “consultation bodies”, “environmental information” and “exempt development” in regulation 2 of the 1999 Regulations and inserts new definitions of “by local advertisement”, “any other information” and “any particular person” into that regulation.

Regulation 4 amends the publicity requirements relating to the National Assembly for Wales' power under regulation 4(4) of the 1999 Regulations to direct that an “exceptional case” is not to be subject to environmental assessment.

Regulations 5 to 9 insert provisions requiring persons and environmental organisations who are likely to be affected by, or have an interest in, an application to be notified.

Regulations 8(a), 10(d)(ii) and 13 reduce the number of copies of environmental statements required to be provided from three to two.

Regulations 10, 11, 14 and 15 extend the requirements in relation to further information to any other information provided by the applicant relating to the environmental statement.

Regulation 12 amends regulation 21 of the 1999 Regulations (duties to inform the public and the National Assembly for Wales of final decisions) by requiring more extensive notification of decisions and information to be provided on the right to challenge the decision.

Regulation 14 makes minor changes in relation to unauthorised development.

Regulations 15 and 16 relate to projects likely to have transboundary effects.

Regulations 17 and 18 make minor changes to Schedules 1 and 2 to the 1999 Regulations, respectively.

Regulation 19 makes a minor consequential amendment to the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419) by updating an environmental impact assessment-related definition contained in article 1 of that Order.

In these Regulations, references to “the Secretary of State” are to be read as references to the National Assembly for Wales in accordance with regulation 2(6) of the 1999 Regulations. See also the entry for the 1999 Regulations in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).