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WELSH STATUTORY INSTRUMENTS

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**2007 No. 2933 (W.253)**

**AGRICULTURE, WALES**

**The Environmental Impact Assessment  
(Agriculture) (Wales) Regulations 2007**

<i>Made</i>	- - - -	8 October 2007
<i>Laid before the National Assembly For Wales</i>	- -	9 October 2007
<i>Coming into force</i>	- -	31 October 2007

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972(1) in relation to measures relating to—

- (a) the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment(2); and
- (b) the conservation of natural habitats and of wild flora and fauna(3).

They make the following Regulations under the powers conferred by that section:

**PART 1**

General provisions

**Title, application and commencement**

1. The title of these Regulations is the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, they apply in relation to Wales and come into force on 31 October 2007.

**Interpretation**

2.—(1) In these Regulations—

“agriculture” (“*amaethyddiaeth*”) has the same meaning as in section 109(3) of the Agriculture Act 1947(4);

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(1) 1972 c. 68. The enabling powers of section 2(2) of this Act were extended by the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51).  
(2) S.I. 2001/2555 in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment.  
(3) S.I. 2002/248 in relation to measures relating to the conservation of natural habitats and of wild fauna and flora.  
(4) 1947 c. 48.

“additional environmental information” (“*gwybodaeth amgylcheddol ychwanegol*”) means any additional information required under regulation 12(1);

“consent” (“*cydsyniad*”) means consent granted under regulation 15(1);

“consultation bodies” (“*cyrff ymgynghori*”) means—

- (a) the Countryside Council for Wales<sup>(5)</sup>;
- (b) the Environment Agency<sup>(6)</sup>;
- (c) any other public authority, statutory body or other organisation which the Welsh Ministers considers has any interest in or holds any information which might be relevant to the project;

“EEA State” (“*Gwladwriaeth AEE*”) means a member State, Norway, Iceland or Liechtenstein;

“the EIA Directive” (“*y Gyfarwydddeb AEA*”) means Council Directive [85/337/EEC](#)<sup>(7)</sup> on the assessment of the effects of certain public and private projects on the environment, as last amended by Directive [2003/35/EC](#)<sup>(8)</sup>;

“environmental statement” (“*datganiad amgylcheddol*”) means a statement—

- (a) that includes as much of the information in Part 1 of Schedule 3 as is reasonably required to assess the environmental effects of the project and which the applicant for consent can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
- (b) that includes at least the information referred to in Part 2 of Schedule 3;

“European site” (“*safle Ewropeaidd*”) means a site mentioned in paragraph (a), (b), (d) or (e) of regulation 10(1) of the Habitats Regulations;

“the Habitats Directive” (“*y Gyfarwydddeb Cynefinoedd*”) means Council Directive [92/43/EEC](#)<sup>(9)</sup> on the conservation of natural habitats and of wild fauna and flora, as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded<sup>(10)</sup>;

“the Habitats Regulations” (“*y Rheoliadau Cynefinoedd*”) means the Conservation (Natural Habitats, &c) Regulations 1994<sup>(11)</sup>;

“project” (“*prosiect*”) means—

- (a) the execution of construction works or other installations or schemes; or
- (b) other interventions in the natural surroundings and landscape;

“the relevant land” (“*y tir perthnasol*”) means the land on which the project is to be (or has been) carried out;

“restructuring project” (“*prosiect ailstrwythuro*”) means a project for the restructuring of rural landholdings;

“screening decision” (“*penderfyniad sgrinio*”) means a decision which is made, or deemed to have been made, by the Welsh Ministers under regulation 7(1) or 7(7);.

<sup>(5)</sup> See section 128 of the Environmental Protection Act 1990 (c. 43).

<sup>(6)</sup> See section 1(1) of the Environment Act 1995 (c. 25).

<sup>(7)</sup> O.J. No. L175, 5.7.85, p.40

<sup>(8)</sup> O.J. No. L156, 25.6.03, p. 17.

<sup>(9)</sup> O.J. No. L206, 22.7.1992, p. 7.

<sup>(10)</sup> O.J. No. L 236, 23.9.2003, p. 667-70. See Annex II: List referred to in Article 20 of the Act of Accession, 16. Environment, C. Nature protection.

<sup>(11)</sup> S.I. 1994/2716, amended by S.I. 1997/3055 and 2007/1843.

“significant project” (“*prosiect sylweddol*”) means an uncultivated land project or a restructuring project which the Welsh Ministers have decided or is deemed to have decided is likely to have significant effects on the environment in accordance with regulation 7(1) or regulation 7(7);

“transborder project” (“*prosiect trawsffiniol*”) means a restructuring project or an uncultivated land project where the relevant land is situated partly in Wales and partly in England;

“uncultivated land project” (“*prosiect tir heb ei drin*”) means a project to increase the productivity for agriculture of uncultivated land or a semi-natural area, and includes projects to increase the productivity for agriculture of such land to below the norm.

(2) Other expressions used both in these Regulations and in the EIA Directive or the Habitats Directive have the same meanings in these Regulations as they have in the relevant Directive.

(3) All applications, notices, notifications, representations, requests, approvals and agreements under these Regulations must be made or given in writing.

(4) “Writing” in paragraph (3), except where it applies to notices under regulation 24 and 26, includes an electronic communication within the meaning of the Electronic Communications Act 2000<sup>(12)</sup>, but notifications required to be made by the Welsh Ministers to any person may only be made by an electronic communication if the intended recipient—

- (a) has him or herself used that form of electronic communication in communicating with the Welsh Ministers under any provision in these Regulations, or
- (b) has otherwise represented that that form of electronic communication is a means by which persons can communicate with him or her.

(5) Notices or documents required or authorised to be served, sent or given under these Regulations may be sent by post.

### **Application of Regulations**

3.—(1) These Regulations apply to any restructuring project or uncultivated land project, unless it is exempt under paragraph (2) or (3).

(2) A restructuring project or an uncultivated land project is exempt if it—

- (a) is a project mentioned in regulation 3(2) of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999<sup>(13)</sup>;
- (b) constitutes development to which the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999<sup>(14)</sup> apply;
- (c) constitutes the carrying out of improvement works by a drainage body within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999<sup>(15)</sup>;
- (d) constitutes a relevant project within the meaning of regulation 3(2) and (3) of the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003<sup>(16)</sup>;
- (e) constitutes the removal of a hedgerow, within the meaning of regulation 5(1) of the Hedgerows Regulations 1997<sup>(17)</sup>; or

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<sup>(12)</sup> 2000 c. 7.

<sup>(13)</sup> S.I. 1999/2228.

<sup>(14)</sup> S.I. 1999/293, amended by S.I. 2000/2867.

<sup>(15)</sup> S.I. 1999/1783, amended by S.I. 2005/1399 and 2006/618.

<sup>(16)</sup> S.I. 2003/164.

<sup>(17)</sup> S.I. 1997/1160.

- (f) constitutes the erection of any building or fence, or the construction of any other work, for which consent is required under section 194 of the Law of Property Act 1925(18).
- (3) A project is exempt under this paragraph to the extent that the Welsh Ministers, in accordance with Article 2(3) of the EIA Directive, directs that it is to be exempt from regulations 4 to 35 of these Regulations.
- (4) In the case of a project which the Welsh Ministers decides is likely to have a significant effect on a European site (either alone or in combination with other projects), the power to direct that the project is exempt under paragraph (3) is exercisable only to the extent that compliance with the Habitats Directive is secured in relation to the project.
- (5) Where the Welsh Ministers proposes to issue a direction under paragraph (3), they must—
- (a) consider whether any other kind of assessment of the project would be appropriate; and
  - (b) take such steps as they consider appropriate to bring to the attention of the public—
    - (i) the information considered in issuing the direction and the reasons for doing so, and
    - (ii) the information obtained from any assessment of the project under sub-paragraph (a).

## PART 2

### Screening

#### Requirement for a screening decision

- 4.—(1) A person must not begin or carry out an uncultivated land project unless he or she has first obtained a screening decision permitting the project to proceed.
- (2) A person must not begin to carry out a restructuring project of an extent equal to or exceeding the applicable threshold (calculated in accordance with regulation 5) unless he or she has first obtained a screening decision permitting the project to proceed.

#### Thresholds

- 5.—(1) This regulation provides the method for determining whether the extent of a restructuring project is equal to or exceeds the threshold applicable.
- (2) The threshold for a type restructuring project specified in column 1 of Schedule 1 is set out in column 2 or 3.
- (3) Paragraphs (4) and (5) apply where a restructuring project consists of only one of the types of restructuring project specified in column 1.
- (4) Where a restructuring project is to be carried out wholly outside a sensitive area, the threshold applicable to it is that specified in column 2.
- (5) Where a restructuring project, or any part of it, is to be carried out in a sensitive area, the threshold applicable to it is that specified for that type of restructuring project in column 3.
- (6) Where a restructuring project is made up of more than one of the types of restructuring project specified in column 1—
- (a) each relevant part of the restructuring project must be assessed so as to determine the threshold applicable to that part, and

- (b) if any relevant part of the restructuring project equals or exceeds the threshold applicable to that part, then the entire restructuring project is to be treated as having an extent equal to or exceeding the threshold applicable to it.
- (7) In this regulation, “sensitive area” (“*ardal sensitif*”) means—
- (a) land notified under sections 3(1) or 5(1) of the Wildlife and Countryside Act 1981<sup>(19)</sup> as amended by the Countryside and Rights of Way Act 2000<sup>(20)</sup> as a site of special scientific interest;
  - (b) a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the protection of the World Cultural and Natural Heritage<sup>(21)</sup>;
  - (c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(22)</sup>;
  - (d) an area of outstanding natural beauty designated as such by an Order made by the Countryside Council for Wales<sup>(23)</sup> under section 82 of the Countryside and Rights of Way Act 2000<sup>(24)</sup> (designation of areas of outstanding natural beauty) and duly confirmed by the Welsh Ministers under section 83(3) of that Act;
  - (e) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949<sup>(25)</sup>; or
  - (f) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979<sup>(26)</sup>.

### **Application for a screening decision**

- 6.—(1) An application for a screening decision must—
- (a) be made to the Welsh Ministers;
  - (b) contain a plan sufficient to identify the relevant land;
  - (c) contain a brief description of the nature, extent and purpose of the project and of its possible effects on the environment;
  - (d) contain any other information or representations as the applicant may wish to provide or make.
- (2) If the Welsh Ministers consider that they do not have sufficient information to make a screening decision they may ask the applicant to supply any additional information they require.
- (3) The Welsh Ministers must notify the applicant of the date on which they receive the application for a screening decision.

### **The screening decision**

- 7.—(1) The Welsh Ministers must, in accordance with paragraph (2) and the selection criteria in Schedule 2, decide whether a project is likely to have significant effects on the environment (whether it is a “significant project”).

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(19) 1981 c. 69.

(20) 2000 c. 37.

(21) See Command Paper 9424.

(22) S.I.1994/2716

(23) See section 128 of the Environmental Protection Act 1990 (c. 43).

(24) 2000 c. 37. Orders designating areas of outstanding natural beauty made before the coming into force of section 82 of the 2000 Act are treated as having been made under section 82 by virtue of paragraph 16 of Schedule 15 to that Act.

(25) 1949 c. 97. Relevant amendments were made by the Environment Act 1995 (c. 25), Schedule 10, paragraph 2.

(26) 1979 c. 46. See the definition in section 1(11).

(2) If the Welsh Ministers decide that a project is likely to have significant effects on a European site (either alone or in combination with other projects), and the project is not directly connected with or necessary for the management of the site, the project shall be treated as being likely to have significant effects on the environment.

(3) Before making a screening decision, the Welsh Ministers may consult any of the consultation bodies.

(4) After making a screening decision, the Welsh Ministers must—

- (a) notify the applicant of it, with reasons;
- (b) enter it in a register, to which the public must have access at all reasonable times; and
- (c) where they consider that any of the consultation bodies might wish to be informed of the screening decision, notify those bodies of it.

(5) The Welsh Ministers must make a screening decision, and notify the applicant of it, within 35 days, or a longer period agreed with the applicant, of the latest of the following dates—

- (a) the date in regulation 6(3); or
- (b) where applicable, the date the Welsh Ministers receive any further information they have requested under regulation 6(2).

(6) If the Welsh Ministers have failed to make or notify a screening decision within the period in paragraph (5), the applicant may notify the Welsh Ministers that he or she intends to treat that failure as a decision that the project is a significant project.

(7) Where the applicant has so notified the Welsh Ministers, the Welsh Ministers are deemed to have decided on the date of that notification that the project is a significant project.

(8) If, after the Welsh Ministers have made, or are deemed to have made, a decision that the project is a significant project—

- (a) The Welsh Ministers receive further information or representations; and
- (b) as a result of those representations the Welsh Ministers decide that the project is not a significant project,

the Welsh Ministers must take all the steps in paragraph (4) in respect of that new decision.

(9) If the project to which a screening decision relates is not begun within a period of three years beginning with the date the screening decision —

- (a) is notified to the applicant; or
- (b) is deemed to have been taken under paragraph (7) ,

the screening decision ceases to have effect.

## **PART 3**

### **Consent**

#### **Requirement for consent**

**8.** A person must not begin or carry out a significant project unless he or she has first obtained consent from the Welsh Ministers.

### **Scoping opinions**

9.—(1) After receiving a screening decision that a project is a significant project, but before applying for consent, the applicant may ask the Welsh Ministers to provide their opinion on what information should be provided in the environmental statement (“a scoping opinion”).

(2) If the applicant requests a scoping opinion, the Welsh Ministers must consult the applicant and such of the consultation bodies as they think fit before providing their opinion.

(3) If the Welsh Ministers consider that they do not have sufficient information to provide a scoping opinion, they may ask the applicant to supply any additional information they require within 28 days of the date on which the Welsh Ministers receive the request for the scoping opinion.

(4) The Welsh Ministers must provide the applicant with the scoping opinion within 5 weeks of

- (a) the date they received the request for a scoping opinion; or
- (b) where applicable, from the date they received the additional information requested under paragraph (3).

### **Provision of information**

10.—(1) This regulation applies if a consultation body—

- (a) is consulted by the Welsh Ministers under regulation 9(2); or
- (b) receives a request for information from a person who intends to apply for consent.

(2) Where this regulation applies, the consultation body must—

- (a) determine whether it has in its possession any information it considers relevant to the preparation of the environmental statement; and
- (b) subject to paragraphs (3) and (4), make that information available to the Welsh Ministers or the applicant (as the case may be) within 28 days of the date of the consultation or the request.

(3) A consultation body may make a reasonable charge to the applicant for providing information under paragraph (2)(b), to reflect the cost of making the relevant information available.

(4) Paragraph (2)(b) does not require a consultation body to make available to the applicant any information which—

- (a) it may refuse to disclose under regulation 12(1) of the Environmental Information Regulations 2004(27); or
- (b) it is prevented from disclosing by regulation 13(1) of those Regulations.

(5) If a consultation body is not a public authority within the meaning of regulation 2(2) of the Environmental Information Regulations 2004, paragraph (4) applies as if it were such a public authority.

### **The consent application**

11.—(1) An application for consent must include an environmental statement and must be made to the Welsh Ministers.

(2) The applicant for consent must provide the Welsh Ministers with as many copies of the application as they reasonably require.

(3) After receiving the application for consent, the Welsh Ministers must—

- (a) send a copy of the application to any of the consultation bodies they consider appropriate, and inform them that they may make representations within 6 weeks of the date they received the application; and
- (b) in order to ensure that members of the public concerned are given an opportunity to make representations before the application is determined, publish in a newspaper circulating in the locality of the relevant land and on the Welsh Assembly Government website a notice—
  - (i) stating that the application has been made;
  - (ii) specifying an address at which copies of the application can be inspected free of charge, and where copies of the application may be taken (for which a reasonable charge may be made), at all reasonable hours within 6 weeks of the date the notice is published;
  - (iii) stating that representations on the likely environmental effects of the project may be made in writing to the Welsh Ministers at the address specified under paragraph (ii) within 6 weeks of the date the notice is published;
  - (iv) stating that, if consent is granted, it will be subject to the conditions in regulation 17(2), and any other conditions that the Welsh Ministers think fit;
  - (v) stating, if relevant, which of the other EEA States, the authorities referred to in Article 6(1) of the EIA Directive and the public concerned in such EEA State, will be consulted on the application.

### **Additional information**

**12.**—(1) If, after complying with regulation 11(3), the Welsh Ministers decide that a statement included with an application for consent, which purports to be an environmental statement, should contain additional information in order to be an environmental statement, it must notify the applicant of the information required (and the number of copies), and the applicant must provide the Welsh Ministers with that information.

- (2) The Welsh Ministers must—
  - (a) send a copy of the additional environmental information to such of the consultation bodies as they think fit, and
  - (b) inform them that they may make representations within 28 days of the date they receive it.
- (3) The Welsh Ministers must publish in a newspaper circulating in the locality of the relevant land and on the Welsh Assembly Government website a notice—
  - (a) referring to the application to which the additional information relates and the date the application was made;
  - (b) stating that the additional environmental information has been received;
  - (c) specifying an address at which copies of the additional environmental information can be inspected free of charge, and where copies of the application may be taken (for which a reasonable charge may be made) at all reasonable hours within 28 days of the date the notice is published; and
  - (d) stating that representations in relation to the additional environmental information may be made in writing to the Welsh Ministers at the address in paragraph (c) within 28 days of the date the notice is published.

### **Procedure where a significant project in Wales may affect another EEA State**

**13.**—(1) As soon as possible after receiving an application for consent for a significant project, the Welsh Ministers must consider whether that project is also likely to have significant effects on the environment in another EEA State.

(2) If the Welsh Ministers consider that such effects are likely, or an EEA State likely to be significantly affected requests, the Welsh Ministers must send to that EEA State—

- (a) details of the nature and location of the significant project;
- (b) any information the Welsh Ministers have on the impact it is likely to have on that EEA State;
- (c) an indication of whether the Welsh Ministers is minded to grant consent for the project, and the nature of any consent that might be granted; and
- (d) a request that the EEA State should indicate within a reasonable time whether it wishes to participate in the procedure under these Regulations.

(3) If the EEA State indicates that it wishes to participate in the procedure under these Regulations, the Welsh Ministers must—

- (a) send it a copy of the application for consent, of the environmental statement and of any further information it considers relevant to the application; and
- (b) provide it with information about the procedure under these Regulations.

(4) The Welsh Ministers must also—

- (a) arrange for the particulars and information in paragraphs (2) and (3) to be made available, in a reasonable time, to the authorities referred to in Article 6(1) of the EIA Directive and the public concerned in the territory of the EEA State; and
- (b) ensure that those authorities and the public concerned are given an opportunity to provide the Welsh Ministers with their opinion on the information supplied within a reasonable time before consent for the project is granted.

(5) In accordance with Article 7(4) of the EIA Directive, the Welsh Ministers must—

- (a) enter into consultations with the EEA State concerned about, amongst other things, the potential significant effects of the project on the environment of that State and the measures envisaged to reduce or eliminate those effects; and
- (b) seek to agree with the EEA State a reasonable period of time for those consultations, which must include time for consideration of any opinions received under paragraph 4(b).

### **Procedure where a significant project in another EEA State may affect Wales**

**14.**—(1) If the Welsh Ministers receive information from another EEA State made available under Article 7(1) and 7(2) of the EIA Directive (which concern information relating to a project in one EEA State which is likely to have significant effects on the environment of another EEA State) in relation to a significant project in that EEA state, the Welsh Ministers must—

- (a) arrange for that information to be made available, in a reasonable time, to the consultation bodies and such members of the public which, in their opinion, are likely to be concerned by the project;
- (b) ensure that the consultation bodies and the members of the public referred to in paragraph (a) are given an opportunity to forward their opinion on the information provided to the competent authority in the EEA State during any period agreed under paragraph (2)(b).

(2) In accordance with Article 7(4) of the EIA Directive, the Welsh Ministers must also—

- (a) enter into consultations with the EEA State concerned about, amongst other things, the potential significant effects of the project on the environment in Wales and the measures envisaged to reduce or eliminate those effects; and
  - (b) seek to agree with the EEA State a reasonable period, before consent for the project is granted, during which any opinions received under paragraph 1(b) can be forwarded to that EEA State.
- (3) If another EEA State has taken a decision to grant or refuse consent and has informed the Welsh Ministers of that decision in accordance with Article 9(2) of the EIA Directive, the Welsh Ministers must take such steps as they consider appropriate to bring to the attention of the public any information received from that EEA State in relation to that decision.

### **The consent decision**

**15.**—(1) When deciding whether to grant consent for a significant project, the Welsh Ministers must consider—

- (a) the environmental statement;
  - (b) any additional environmental information;
  - (c) any representations they receive under—
    - (i) regulation 11(3)(a);
    - (ii) regulation 12(2)(b) and (3)(d); and
    - (iii) regulation 13(4)(b) and
  - (d) any social or economic impacts which might result from a decision to refuse consent for the project.
- (2) The Welsh Ministers must not reach its decision under paragraph (1) until the latest of—
- (a) the expiry of the period in the notice under regulation 11(3)(b)(iii);
  - (b) the expiry of the period of 28 days after—
    - (i) the date on which any additional environmental information was sent to the consultation bodies; and
    - (ii) the date notice of the additional environmental information was published under regulation 12(3); and
  - (c) the expiry of any period agreed with another EEA State under regulation 13(5)(b).

whichever is the last to occur.

### **Additional requirements relating to the Habitats Regulations**

**16.**—(1) The Welsh Ministers must not grant consent for a project that would involve doing anything which would be unlawful under regulations 39, 41 or 43 of the Habitats Regulations (but that does not include anything for which a licence has been granted under regulation 44 of those Regulations).

(2) Paragraphs (3) to (6) apply when the Welsh Ministers are deciding whether to grant consent for a project which is likely to have a significant effect on a European site (either alone or in combination with other projects) (referred to in those paragraphs as “the project”).

(3) Unless paragraph (4) applies, the Welsh Ministers may only grant consent for the project if they have considered the implications of the project for the European site (including an appropriate assessment of the implications in view of that site’s conservation objectives) and are satisfied that the project will not adversely affect the integrity of the site.

(4) If the Welsh Ministers are satisfied that the project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (5), may be of a social or economic nature) and that there is no alternative solution, it may grant consent for the project even though the assessment of its implications for a European site is negative.

(5) If the European site hosts a priority natural habitat type or a priority species, the reasons in paragraph (4) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or
- (b) other reasons which in the opinion of the European Commission are, in the case of the site concerned, imperative reasons of overriding public interest.

(6) If the Welsh Ministers decide to grant consent for a project in accordance with paragraph (4), they must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 (within the meaning of regulation 2(1) of the Habitats Regulations) is protected.

### **Conditions of consent**

17.—(1) Any consent granted under regulation 15 is to be subject to—

- (a) the conditions in paragraph (2); and
- (b) any other conditions the Welsh Ministers think fit.

(2) The conditions required by paragraph (1)(a) are—

- (a) the consent lapses if the project is not commenced (by the carrying out of a material act) within 1 year of the date on which it was granted;
- (b) the consent expires if the project is not completed within 3 years of the date on which it was granted; and
- (c) the consent only authorises the project described in the consent application, subject to any amendments approved by the Welsh Ministers under paragraph (4).

(3) After the expiry of a consent in accordance with paragraph (2)(b), the Welsh Ministers may require a further application for consent in accordance with paragraph (5) in respect of any further operations or uses forming part of the project.

(4) The Welsh Ministers may approve any amendments at the request of an applicant, but any material change in the authorised operations or uses requires a further application for consent in accordance with paragraph (5).

(5) Further applications for consent under paragraphs (3) and (4) may be subject to any requirement of these Regulations that the Welsh Ministers consider appropriate.

(6) In this regulation, a project is “completed” (“*wedi'i gwblhau*”) if all the works permitted by the consent have been carried out and all changes in the use, or the level of use, of the relevant land have been implemented.

### **Procedure following a consent decision**

18. When the Welsh Ministers have made a consent decision in respect of a project they must—

- (a) notify the applicant, any consultation bodies to whom copies of the consent application were sent under regulation 11(3)(a), any EEA State they consulted under regulation 13 (5) and any authority or person who forwarded their opinion under regulation 13(2)(b) of—
  - (i) their decision;
  - (ii) the full reasons and considerations on which the decision is based; and

- (iii) any representations made by the public concerned in respect of the application;
- (b) inform the public of their decision by publishing a notice in a newspaper in the locality in which the relevant land is situated or by any other means it considers reasonable in the circumstances; and
- (c) make available for public inspection a statement containing—
  - (i) the content of the decision;
  - (ii) the full reasons and considerations on which the decision is based;
  - (iii) where relevant, a description of the principal measures that must be taken to avoid, reduce or offset the major adverse effects of the project;
  - (iv) a summary of any representations made by the public concerned in relation to the application; and
  - (v) information regarding the right to challenge the decision and the procedures for doing so.

### **Transborder projects**

**19.**—(1) In the case of a transborder project where the greater part of the relevant land is situated in Wales, the Welsh Ministers must consult the Secretary of State before—

- (a) making a screening decision under regulation 7;
- (b) providing a scoping opinion under regulation 9; or
- (c) granting or refusing consent under regulation 15.

(2) Except where an agreement to the contrary has been reached under paragraph (4), in the case of a transborder project where the greater part of the land is situated in England, that project will be subject only to the equivalent Regulations applicable to the project in England.

(3) In the case of an application in respect of a transborder project to which these Regulations would otherwise apply, if so requested by the Secretary of State, the Welsh Ministers may agree that the application should be subject only to the equivalent Regulations applicable to the project in England.

(4) If the Welsh Ministers so request, and the Secretary of State agrees, a transborder project to which paragraph (2) would otherwise apply shall be subject only to these Regulations.

### **Review of decisions and consents**

**20.** Schedule 4 applies if, after the date of—

- (a) a decision that a project is not a significant project, or
- (b) a decision to grant consent for a project,

a site becomes a European site and the Welsh Ministers consider that the carrying out or completion (within the meaning of “completed” in regulation 17(6)) of the project would be likely to have a significant effect on that site and would not be directly connected with or necessary for the management of the site.

## **PART 4**

### **Enforcement**

#### **Offence of carrying out a project without a decision under these Regulations**

**21.**—(1) Any person who begins or carries out an uncultivated land project or a restructuring project —

- (a) in breach of regulation 4, or
- (b) in breach of regulation 8,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) In any proceedings under this regulation which relate to an uncultivated land project, any area of land which the prosecution alleges to be uncultivated land will be assumed to be uncultivated land unless sufficient evidence is adduced to raise an issue it is not uncultivated land, in which case the prosecution must prove beyond reasonable doubt that the land is uncultivated land.

#### **Offence of carrying out work in contravention of a condition**

**22.** Any person who carries out any activity in contravention of any condition of consent granted under these Regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **Offence of procuring a decision by supplying false information**

**23.**—(1) Any person who, for the purpose of procuring a particular decision on an application made under these Regulations—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular,
- (b) with intent to deceive, uses any document which is false or misleading in a material particular, or
- (c) with intent to deceive, withholds any material information,

is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

#### **Stop notices**

**24.**—(1) If a person has begun an uncultivated land project or a restructuring project —

- (a) in breach of regulation 4, or
- (b) in breach of regulation 8,

the Welsh Ministers may serve a notice (a “stop notice”) prohibiting all or part of the work with immediate effect.

(2) The Welsh Ministers may serve a stop notice on any person who appears to it to have an interest in the relevant land or to be engaged in any activity prohibited by the notice.

(3) The Welsh Ministers may withdraw a stop notice (without affecting its power to serve another) at any time by serving notice to that effect on the persons served with a stop notice.

- (4) A stop notice ceases to have effect if—
- (a) a notice withdrawing it is served under paragraph (3); or
  - (b) the Welsh Ministers on appeal, decide that the prohibited work is not a significant project; or
  - (c) the Welsh Ministers grant consent for the prohibited work.

#### **Penalties for contravention of a stop notice**

**25.**—(1) Any person who contravenes a stop notice that has been served on him or her is guilty of an offence.

(2) An offence under this regulation may be charged by reference to any day or any longer period of time, and a person may be convicted of a second or subsequent offence under this regulation by reference to any period of time following the preceding conviction for such an offence.

(3) References in this regulation to contravening a stop notice mean causing or permitting its contravention.

- (4) A person guilty of an offence under this regulation is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to a fine.

#### **Remediation notices**

- 26.**—(1) If a person has carried out an uncultivated land project or a restructuring project—
- (a) in breach of regulation 4, or
  - (b) in breach of regulation 8,

the Welsh Ministers may serve a notice (“a remediation notice”) on the person who appears to them to be responsible.

- (2) A remediation notice may require the person—
- (a) to reinstate, to the Welsh Ministers' satisfaction, the relevant land to the condition it was in before the project was commenced, or
  - (b) to take such other steps as the Welsh Ministers think fit to return the relevant land to good environmental condition or to such a standard as the Welsh Ministers determine is reasonable in the circumstances.
- (3) A remediation notice must state the period during which the remediation is to be carried out.

#### **Penalty for contravening a remediation notice**

**27.** Any person who, without reasonable excuse, fails to comply with any requirement of a remediation notice is guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 5 on the standard scale; and
- (b) if the failure is continued after conviction, to a further fine not exceeding £100 for every day the failure continues.

#### **Time limits for bringing proceedings**

**28.**—(1) Proceedings for any offence under regulation 21 to 23, 25 or 27 may be brought within the period of 6 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his or her knowledge.

(2) Proceedings for an offence may not be commenced more than 2 years after the date on which the offence was committed.

(3) For the purposes of paragraph (2), a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his or her opinion to warrant the proceedings came to his or her knowledge will be conclusive evidence of that fact.

(4) A certificate stating that matter and purporting to be so signed will be deemed to be so signed unless the contrary is proved.

### **Powers of entry and default powers**

**29.**—(1) Any person authorised by the Welsh Ministers may, at any reasonable time, enter and inspect any land for the purpose of—

- (a) ascertaining whether regulation 4 or 8 has been breached;
- (b) ascertaining whether an offence under regulation 21 to 23, 25 or 27 has been committed on or in connection with that land;
- (c) serving a screening notice, stop notice or remediation notice in respect of that land; or
- (d) exercising any function under Schedule 4.

(2) Any person authorised by the Welsh Ministers who has reasonable grounds for suspecting that a person has committed an offence under regulation 23, may enter any premises (but not premises used only as a dwelling) which are, or which such person has cause to believe to be, occupied by, or in the possession of, the person believed to be responsible for committing the offence, and may inspect and take copies of any records he or she has reasonable cause to believe are relevant to the suspected offence.

(3) If any measures required by a remediation notice or by notice served under paragraph 5 of Schedule 4 have not been taken within the period specified in the notice—

- (a) any person authorised by the Welsh Ministers may, at a reasonable time, enter the land to which the notice relates and take those measures, and
- (b) recover from the person in default the expenses reasonably incurred by him in doing so.

(4) A person authorised under paragraph (1) to enter any land or premises may remove—

- (a) samples of soil;
- (b) plant specimens; or
- (c) samples taken from plant specimens,

for the purpose of ascertaining whether an offence has been committed on or in connection with that land.

(5) A person authorised under paragraph (1), (2) or (3) to enter any land or premises must, if requested to do so, produce evidence of his or her authority to enter the land or premises.

(6) A person authorised under paragraph (1) (2) or (3) to enter any land or premises may take with him or her such other persons or such equipment as he or she considers necessary.

(7) Any person in occupation or possession of land or premises entered by a person authorised under paragraph (1) (2) or (3) must give to that person such assistance as the authorised person may reasonably request so as to enable him or her to exercise any power conferred on him or her by this regulation.

(8) A person who intentionally obstructs or impedes any person acting in the exercise of the powers conferred by this regulation or who fails without reasonable excuse to comply with a request made under paragraph (7) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## PART 5

### Appeals

#### Appeals against notices

- 30.**—(1) A person may appeal to the Welsh Ministers in accordance with this regulation against—
- (a) a stop notice;
  - (b) a remediation notice, or
  - (c) a notice under paragraph 5 of Schedule 4,
- and any such notice is referred to in this regulation as the “relevant notice” (*“hysbysiad perthnasol”*).
- (2) An appeal may be brought on any of the following grounds—
- (a) that the Welsh Ministers did not have power to serve the relevant notice, or to include a particular requirement in it;
  - (b) that there has been some material irregularity, defect or error in, or in connection with, the relevant notice; or
  - (c) that any of the requirements of the relevant notice are unreasonable.
- (3) An appeal against a relevant notice must be brought by notice, which must—
- (a) include a copy of the relevant notice;
  - (b) state the grounds of appeal; and
  - (c) be served on the Welsh Ministers within 28 days of the date of service of the relevant notice.
- (4) Except as otherwise provided by this regulation, the Welsh Ministers may determine the procedure (which may include provision for site visits) for deciding the appeal.
- (5) Appeals under this regulation may be conducted by written representations or by hearing.
- (6) On determining the appeal, the Welsh Ministers—
- (a) may affirm, vary or revoke the relevant notice, and
  - (b) must notify the applicant with the reasons for their decision.
- (7) Where an appeal is brought against a stop notice (unless the notice is withdrawn by the Welsh Ministers) all the requirements contained in it have effect until such time as the Welsh Ministers revoke the notice or vary the requirements.
- (8) If the Welsh Ministers vary the requirements of a screening notice or a stop notice the variations have effect from the date of notification under paragraph (6)(b).
- (9) Where an appeal is brought against a remediation notice, the notice will be of no effect until it is affirmed or varied on appeal or until the appeal is withdrawn.
- (10) The Welsh Ministers may appoint a person to exercise on their behalf, with or without payment, their function of determining the appeal or any matter involved in the appeal, and Schedule 5 has effect in relation to such an appointment.

#### Appeals against screening and consent decisions

- 31.**—(1) The persons specified in paragraph (2) may appeal to the Welsh Ministers under this regulation against a decision, consent or notification (as the case may be) (a “relevant decision”).
- (2) The persons referred to in paragraph (1) are—

- (a) a person who has applied for a screening decision in respect of a project which the Welsh Ministers have decided is a significant project, or is deemed to have so decided, under regulation 7;
  - (b) a person who has applied for consent for a significant project in respect of which consent has been refused or has been granted subject to conditions, other than those specified in regulation 17(2); and
  - (c) a person who has been notified of a decision under paragraph 3 of Schedule 4.
- (3) An appeal against a relevant decision must be brought within 3 months of the date the person was notified of the relevant decision.
- (4) A notice of appeal must—
- (a) describe the relevant decision;
  - (b) state the grounds of appeal; and
  - (c) state whether the appellant would like the appeal to be in the form of a hearing or local inquiry or to be disposed of on the basis of written representations.
- (5) The Welsh Ministers must serve copies of the notice on the interested parties as soon as is reasonably practicable after receiving that information.
- (6) A person who is served with a copy of the notice under paragraph (5) may only make representations in respect of the appeal if he or she notifies the Welsh Ministers of his or her wish to do so within 21 days of the date he or she receives the copy of the notice.
- (7) The Welsh Ministers must decide—
- (a) whether the appeal should be by hearing or by local inquiry; or
  - (b) whether the appeal should be conducted by written representations,
- and the Welsh Ministers must notify their decision to the participants in the appeal.
- (8) On determining the appeal, the Welsh Ministers may allow or dismiss the appeal, or reverse any part of the relevant decision, and may consider the appeal as though they were considering the decision at first instance.
- (9) The Welsh Ministers may appoint a person to exercise on their behalf, with or without payment, their function of determining the appeal or any matter involved in the appeal, and Schedule 5 has effect in relation to such an appointment.
- (10) Subsections (2) to (5) of section 250 of the Local Government Act 1972<sup>(28)</sup> (local inquiries, evidence and costs) apply in relation to hearings or local inquiries held in accordance with regulation 33 as they apply to local inquiries under that section, but as if the references to the Minister were references to the Welsh Ministers and with the omission of references to a local authority.
- (11) Section 322A of the Town and Country Planning Act 1990<sup>(29)</sup> (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or local inquiry under regulation 33 as it applies to a hearing or local inquiry referred to in that section.
- (12) Except as otherwise provided by this regulation or by regulation 32 or 33, the Welsh Ministers must determine the procedure (which may include provisions for site visits) for deciding the appeal.
- (13) Any representations, statement or other documents to be submitted to the Welsh Ministers under regulation 32 or 33 must be accompanied by so many copies as the Welsh Ministers may specify.
- (14) In this regulation, “relevant decision” means —

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<sup>(28)</sup> 1972 c. 70.

<sup>(29)</sup> 1990 c. 8. Section 322A was inserted by the Planning and Compensation Act 1991 (c. 34), section 30(1).

- (a) a decision referred to in paragraph (2)(a)
- (b) a refusal of consent or a grant of consent subject to conditions referred to in paragraph (2)(b)
- (c) a notification referred to in paragraph (2)(c).

### **Determination of appeals by written representations**

- 32.**—(1) This regulation applies where an appeal is to be determined by written representations.
- (2) Within 6 weeks of receiving notice that the appeal is to be so determined the appellant must—
- (a) serve on the Welsh Ministers any (or any further) representations they wish to rely on in the appeal; or
  - (b) notify the Welsh Ministers that they wish to rely only on the information already provided.
- (3) As soon as is practicable after receiving the information or notification in paragraph (2), the Welsh Ministers must—
- (a) send copies of any (or any further) representations to the other participants in the appeal; and
  - (b) notify the other participants in the appeal of any notification by the appellant that he or she does not wish to rely on any further representations.
- (4) Any of the participants in the appeal who wish to make representations must do so within 28 days of the date he or she is notified of the information or indication under paragraph (3).
- (5) If the Welsh Ministers receive any representations under paragraph (4), they must send copies of those representations to the other participants in the appeal.
- (6) The Welsh Ministers must allow the participants in the appeal a period of at least 14 days to respond to any representations made under paragraphs (2) or (4).
- (7) Following the expiry of the period allowed in paragraph (4) the Welsh Ministers, or the person appointed to determine the appeal, must determine the appeal and notify the decision to the participants in the appeal.

### **Determination of appeals by hearing or local inquiry**

- 33.**—(1) This regulation applies where an appeal is to be determined by hearing or by local inquiry.
- (2) Within 6 weeks of receiving notice that the appeal is to be so determined, the appellant must serve on the Welsh Ministers a statement containing full particulars of his or her case and copies of any documents he or she wishes to rely on at the hearing or local inquiry.
- (3) After receiving the statements and documents in paragraph (2), the Welsh Ministers must send copies of them to the other participants in the appeal.
- (4) The Welsh Ministers must—
- (a) give the participants in the appeal 6 weeks' notice of the date, time and place fixed for the hearing or local inquiry and the name of the person appointed to conduct the hearing or local inquiry (or, as applicable, to determine the appeal); and
  - (b) give such notice as they think fit to inform the public not less than 21 days before the date fixed for the hearing or local inquiry.
- (5) The Welsh Ministers may vary the time or place for the hearing or local inquiry and must give such notice of the variation as they think fit.
- (6) If an interested party wishes to be heard at the hearing or local inquiry he or she must notify the Welsh Ministers within 28 days of being sent the appellant's statements under paragraph (3).

(7) Where a person has so notified the Welsh Ministers, the Welsh Ministers may require him or her to submit a statement containing the particulars of his or her case and copies of any documents he or she wishes to refer to (except documents which the appellant served under paragraph (2)).

(8) The Welsh Ministers must send copies of any statements and documents received under paragraph (7) to the appellant.

(9) The Welsh Ministers may require any person who has provided them with a statement under paragraph (2) or (7) to provide them with any further information they specify in relation to the statement, and must send a copy of the further information to each of the other participants in the appeal.

(10) Before a hearing or local inquiry takes place the Welsh Ministers must make all of the documents submitted available for inspection by any person who so requests.

(11) The participants in the appeal are entitled to be heard at a hearing or local inquiry.

(12) Any participant in the appeal who proposes to give evidence at an inquiry by reading a witness statement must send a copy of the witness statement, and a written summary of it, to the Welsh Ministers not less than 3 weeks before the date fixed for the inquiry, and the Welsh Ministers must send copies of the witness statement and summary to the other participants in the appeal.

(13) After the conclusion of the hearing or local inquiry, the person appointed to conduct the hearing or local inquiry must, unless he or she has been appointed to determine the appeal, make a report to the Welsh Ministers which must include—

(a) his or her conclusions; and

(b) his or her recommendations or his or her reasons for not making any recommendations.

(14) If the Welsh Ministers are minded to disagree with the recommendation made in the report because they—

(a) differ from the person making the report on any matter of fact mentioned in, or appearing to them to be material to, a conclusion reached by that person; or

(b) takes into consideration new evidence or a new matter of fact,

they must not come to a decision without first giving every person who appeared at the hearing or local inquiry an opportunity to make representations within a reasonable time specified by them.

(15) The Welsh Ministers or the person appointed to determine the appeal must notify the decision and the reasons for it, and send a copy of the report made under paragraph (13), to the participants in the appeal.

### **Application to the court by person aggrieved**

**34.**—(1) A person aggrieved by a decision of the Welsh Ministers that a project is not a significant project or a decision to grant consent for a significant project may make an application to the High Court for an order quashing the decision.

(2) The High Court may quash the decision if it is satisfied that—

(a) the decision is not lawfully made; or

(b) the interests of the person who has applied to the court have been substantially prejudiced by a failure to comply with any other requirement of these Regulations.

(3) Any application to the High Court under this regulation must be made within 6 weeks of the date the decision is entered in the register in accordance with regulation 7(4)(b) or published in accordance with regulation 18(b).

(4) The High Court may by interim order, pending the determination of an application under this regulation, stay the operation of the decision on such terms as it thinks fit.

**Interpretation of this Part****35.** In this Part—

“interested parties” (*“partïon sydd â buddiant”*) means—

- (a) such of the consultation bodies as the Welsh Ministers consider appropriate;
- (b) any person who made representations in respect of a relevant decision (within the meaning of “relevant decision” in regulation 31(14)).
- (c) any EEA State consulted under regulation 13(4);
- (d) any authority or person who forwarded their opinion under regulation 13(4)(b);
- (e) any other person who appears to the Welsh Ministers to have a particular interest in the subject matter of the appeal.

“participants in the appeal” (*“cyfranogwyr yn yr apêl”*) means—

- (a) the appellant;
- (b) the interested parties;
- (c) in the case of a hearing or local enquiry, any other person permitted to take part by the person appointed to conduct the hearing or local inquiry.

**PART 6**

## Final Provisions

**Amendment of the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004**

**36.** The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004<sup>(30)</sup> are amended by substituting paragraph 14 of the Schedule with the following—

“**14.**—(1) A farmer must not begin or carry out an uncultivated land project or a restructuring project—

- (a) in breach of regulation 4 of, or
- (b) in breach of regulation 8 of,

the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007.

(2) A farmer must not breach a stop notice that has been served on him under regulation 24 of those Regulations.

(3) A farmer must not, without reasonable excuse, fail to comply with any requirement of a remediation notice served on him under regulation 26 of those Regulations.

(4) In this paragraph “uncultivated land project” has the meaning given to it by regulation 2(1) of those Regulations.”

**Revocations**

**37.** The following Regulations are revoked—

<sup>(30)</sup> S.I. 2004/3280.

- (a) the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Wales) Regulations 2002<sup>(31)</sup>; and
- (b) the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Wales) (Amendment) Regulations 2007<sup>(32)</sup>.

### **Transitional provisions**

**38.**—(1) This regulation provides for the treatment of certain notices served under the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Wales) Regulations 2002 (“the 2002 Regulations”).

(2) Any stop notice served under regulation 22 of the 2002 Regulations is to be treated as though it was served under regulation 24 of these Regulations, and regulations 25, 28 and 29 of these Regulations apply to any enforcement action taken in respect of a breach of the notice.

(3) Subject to paragraph (4), any reinstatement notice served under regulation 24 of the 2002 Regulations is to be treated as though it was served as a remediation notice under regulation 26 of these Regulations, and regulations 27 to 29 apply to any enforcement action taken in respect of a breach of the notice.

(4) Nothing in paragraph (3) affects any appeal under regulation 24(3) of the 2002 Regulations brought before the coming into force of these Regulations.

8 October 2007

*Elin Jones*  
Minister for Rural Affairs, one of the Welsh  
Ministers

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<sup>(31)</sup> S.I. 2002/2127 (W.214), amended by S.I. 2007/203 (W.17).

<sup>(32)</sup> S.I. 2007/203 (W.17).

**Status:** This is the original version (as it was originally made).

## SCHEDULE 1

regulation 5

### Thresholds

Column 1	Column 2	Column 3
Boundary restructuring project	4 kilometres	2 kilometres
Area restructuring project	100 hectares	50 hectares
Volume restructuring project	10,000 cubic metres	5,000 cubic metres

#### Interpretation of this Schedule

In this Schedule—

“area restructuring project” (“*prosiect ailstrwythuro arwynebedd*”) means a restructuring project which involves an area of land;  
“boundary restructuring project” (“*prosiect ailstrwythuro terfyn*”) means a restructuring project involving the addition or removal of any field boundary (including any wall, fence, bank, ditch or watercourse);  
“volume restructuring project” (“*prosiect ailstrwythuro cyfaint*”) means a restructuring project involving the addition, removal or redistribution of a volume of earth or other material in relation to land.

## SCHEDULE 2

regulation 7

### Selection criteria for a screening decision

#### Characteristics of projects

1. The characteristics of projects, having regard in particular to—
  - (a) the size of the project;
  - (b) the cumulation with other projects;
  - (c) the use of natural resources;
  - (d) the production of waste;
  - (e) pollution and nuisances; and
  - (f) the risk of accidents, having regard in particular to substances or technologies used.

#### Location of Project

2. The environmental sensitivity of geographical areas likely to be affected by projects, having regard in particular to—
  - (a) the existing land use;
  - (b) the relative abundance, quality and regenerative capacity of natural resources in the area; and
  - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
    - (i) wetlands;
    - (ii) coastal zones;
    - (iii) mountain and forest areas;
    - (iv) nature reserves and parks;
    - (v) areas classified or protected under legislation (including European sites);

- (vi) areas in which the environmental quality standards laid down in any legislation of the Communities have already been exceeded;
- (vii) densely populated areas; and
- (viii) landscapes of historical, cultural or archaeological significance.

### **The potential impact**

- 3.** The potential significant effects of projects, in relation to criteria set out under paragraphs 1 and 2, having regard in particular to—
- (a) the extent of the impact (geographical area and size of the affected population);
  - (b) the impact on other EEA States;
  - (c) the magnitude and complexity of the impact;
  - (d) the probability of the impact; and
  - (e) the duration, frequency and reversibility of the impact.

## SCHEDULE 3

regulation 2(1)

### Information for inclusion in the environmental statements

## **PART 1**

- 1.** A description of the project, including in particular—
- (a) a description of the physical characteristics of the whole project and the land use requirements during the construction, or other implementation, and operational phases;
  - (b) a description of the main characteristics of the production processes, for instance, nature and quantity and the materials used;
  - (c) an estimate, by type and quantity, of expected residues and emissions (including water, air and soil pollution, noise, vibration, light, heat, radiation) resulting from the operation of the proposed project.
- 2.** An outline of the main alternatives studied by the applicant for consent and an indication of the main reasons for his or her choice, taking into account the environmental effects.
- 3.** A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
- 4.** A description of the likely significant effects of the project on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project, resulting from—
- (a) the existence of the project;
  - (b) the use of natural resources; and
  - (c) the emission of pollutants, the creation of nuisances and the elimination of waste,
- and the description by the applicant for consent of the forecasting methods used to assess the effects on the environment.

*Status: This is the original version (as it was originally made).*

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
6. A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.
7. An indication of any difficulties (including technical deficiencies or lack of expertise) encountered by the applicant for consent in compiling the required information.

## **PART 2**

1. A description of the project comprising information on the site, design and size of the project.
2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
3. The data required to identify and assess the main effects which the project is likely to have on the environment.
4. An outline of the main alternatives studied by the applicant for consent and an indication of the main reasons for his choice, taking into account the environmental effects.
5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

### SCHEDULE 4

regulation 20

#### Review of decisions and consents

1. As soon as is reasonably practicable the Welsh Ministers must, for the purpose of determining whether the project permitted by the decision or consent will adversely affect the integrity of the site, make an appropriate assessment of the implications of the project for the European site in view of the site's conservation objectives.
2. For the purposes of the assessment, the Welsh Ministers may —
  - (a) require any person interested in the relevant land to supply them with such information as they reasonably think necessary; and
  - (b) if they consider it necessary, consult members of the public.
3. Unless, following the assessment, the Welsh Ministers are satisfied that the project permitted by the decision or consent will not adversely affect the integrity of the European site, and regulation 16(4) does not apply, the Welsh Ministers must—
  - (a) in the case of a decision, revoke the decision; and
  - (b) in the case of a consent, either—
    - (i) revoke the consent; or
    - (ii) make such modifications to the consent as appear to them to be necessary to ensure that the project will not adversely affect the integrity of the European site, and the Welsh Ministers must notify all persons who appear to them to have an interest in the relevant land of their decision (its “further decision”).
4. Subject to paragraph 5, a further decision does not affect any works that have already been carried out in relation to a decision or consent.
- 5.—(1) If—

- (a) a project which is subject to a further decision has commenced; and
- (b) it appears to the Welsh Ministers to be necessary to safeguard the integrity of the European site,

the Welsh Ministers may by notice require the person responsible for carrying out such works, or any person with an interest in the relevant land, to carry out such works of reinstatement as may be reasonable in the circumstances.

(2) A notice under paragraph (1) must state the period during which the works must be carried out.

(3) Any person who carries out such reinstatement works is entitled, on making a claim in accordance with paragraph 8, to recover from the Welsh Ministers compensation in respect of any expenses reasonably incurred by him or her in carrying out those works.

**6.—**(1) Regulation 31 applies to a decision made under paragraph 3.

(2) Regulation 30 applies to a notice served under paragraph 5.

**7.** If, following a further decision under paragraph 3, a person has incurred expenditure in carrying out work which is rendered abortive by the further decision, or has otherwise sustained loss or damage which is directly attributable to the further decision, he or she is entitled to be paid compensation on submitting a claim in accordance with paragraph 8.

**8.** A claim for compensation payable under paragraph 5(3) or 7 must be submitted to the Welsh Ministers within 6 weeks of the notification of the decision in which compensation is payable and must be accompanied by such evidence as the Welsh Ministers may reasonably require.

**9.** Any dispute as to the amount of compensation payable under paragraphs 5(3) and 7 may be referred to the Lands Tribunal within 6 years of the date of notification of the further decision in respect of which compensation is payable.

**10.** Nothing in this Schedule affects anything done in pursuance of a decision or consent before the date the site became a European site.

## SCHEDULE 5

Regulations 30(10) and 31(9)

### Delegation of appellate functions

**1.** In this Schedule “appointed person” (“*person penodedig*”) means a person appointed under regulation 30(10) or 31(9) and “appointment” (“*penodiad*”) means an appointment under either of those regulations.

**2.** An appointment must be in writing and—

- (a) may relate to any particular appeal or matter specified in the appointment or to appeals or matters of a specified description;
- (b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of any conditions specified in the appointment; and
- (c) may, by notice given to the appointed person, be revoked at any time by the Welsh Ministers in respect of any appeal or matter which has not been determined by the appointed person before that time.

**3.** Subject to the provisions of this Schedule, an appointed person has, in relation to any appeal or matter to which his appointment relates, the same powers and duties as the Welsh Ministers has under regulation 30(6), or regulation 31(8), (10), (12) and (13) as the case may be.

*Status: This is the original version (as it was originally made).*

**4.—(1)** The provisions of this paragraph apply to an appeal under regulation 30 or 31 which falls to be determined by an appointed person and, in the case of an appeal under regulation 31, apply instead of regulation 31(7).

(2) If the appellant or the Welsh Ministers inform the appointed person that they wish to appear before and be heard by him or her, the appointed person must give them an opportunity to do so.

(3) Even if the appellant or the Welsh Ministers has not asked to appear and be heard, the appointed person—

(a) may—

(i) in the case of an appeal under regulation 30, hold a hearing in connection with the appeal or matter, and

(ii) in the case of an appeal under regulation 31, hold a local inquiry or other hearing in connection with the appeal or matter; and

(b) must, in the case of an appeal under regulation 31, hold a local inquiry in connection with the appeal or matter if the Welsh Ministers direct.

(4) The appointed person must notify his or her decision to hold a hearing or a local inquiry (as the case may be) to the appellant, the Welsh Ministers and to any persons who notified the Welsh Ministers that they wish to make representations under regulation 31(6).

(5) If an appointed person holds a local inquiry or other hearing under this Schedule, the Welsh Ministers may appoint an assessor to sit with the appointed person and advise him or her on any matters arising, notwithstanding that the appointed person is to determine the matter or appeal.

(6) Subject to regulation 31(10), the costs of the hearing or local inquiry held under this Schedule must be met by the Welsh Ministers.

**5.—(1)** If the appointment of the appointed person is revoked under paragraph 2(c) in respect of any appeal or matter, the Welsh Ministers must, unless they propose to determine the matter themselves, appoint another person under regulation 30(10) or 31(9) to determine the appeal or matter instead.

(2) If a new appointment is made, the consideration of the appeal or matter, or any local inquiry or other hearing in connection with it, must begin afresh.

(3) Nothing in sub-paragraph (2) requires any person to be given an opportunity to make fresh representations or to modify or withdraw any representations already made.

**6.—(1)** Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates is to be treated for all purposes as done or omitted to be done by the Welsh Ministers.

(2) Sub-paragraph (1) does not apply—

(a) for the purposes of so much of any contract made between the Welsh Ministers and the appointed person as relates to the exercise of the function; or

(b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that sub-paragraph.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations primarily implement Council Directive [85/337/EEC](#) (OJNo. L175, 5.7.85, p40) on the assessment of the effects of certain public and private projects on the environment (as last amended by Directive [2003/35/EC](#)) (OJ No. L156, 25.6.03, p17) (“the EIA Directive”) in relation to two types of project in paragraph 1 of Annex II to that Directive: projects for the restructuring of rural land holdings, and semi-natural areas for intensive agricultural purposes.

They also implement Council Directive [1992/43/EEC](#) (OJ No. L206, 22.7.1992, p7) on the conservation of natural habitats and of wild flora and fauna (as last amended by the Act concerning the conditions of accession of the new member States) (OJ No. L236, 23.9.2003, p.667-70. See Annex II:16. Environment, C Nature protection.) (“the Habitats Directive”) insofar as those projects affect sites protected by that Directive.

Regulation 3 sets out the types of projects which are excluded from the scope of the Regulations. These include works which are covered by equivalent regulatory regimes covering forestry, water management and land drainage projects, the removal of hedgerows, the erection of buildings and fences and other work on common land, and the planning system. It also gives the Welsh Ministers the power to exclude certain projects from the scope of the Regulations in accordance with the EIA and Habitats Directives.

Regulation 4 prohibits any person from beginning or carrying out a uncultivated land project unless that person has obtained a screening decision (a decision on whether the project is likely to have significant effects on the environment). It prohibits any person from beginning or carrying out a restructuring project unless that person has obtained a screening decision allowing the project to go ahead, or the extent of the project falls below the threshold applicable to it. Regulation 5 and Schedule 1 set out how to calculate the appropriate threshold for a restructuring project.

Regulation 6 sets out what must be included in an application for a screening decision, and allows the Welsh Ministers to ask for further information if necessary.

Regulation 7 and Schedule 2 set out the factors to be taken into consideration by the Welsh Ministers when they make a screening decision, and the procedures relating to screening decision. Schedule 2 is based on Annex III to the EIA Directive.

Regulation 8 prohibits a person from beginning or carrying out a project likely to have significant effects on the environment unless he or she has first obtained consent from the Welsh Ministers.

Regulation 9 sets out the procedure by which the Welsh Ministers can give an applicant for consent a scoping opinion (an opinion on what information should be provided in an environmental statement). Regulation 10 sets out the duties of consultation bodies from whom information is sought in connection with a scoping opinion or an application for consent.

Regulation 11 provides that applications for consent must include an environmental statement (as to the content, see the definition of “environmental statement” and Schedule 3), and sets out consultation procedures relating to the application. Regulation 12 sets out further procedures relating to any further information that is required from the applicant for consent.

Regulations 13 and 14 respectively set out the procedures to be followed where a significant project in Wales might affect another EEA State, and a significant project in another EEA State might affect Wales.

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Regulation 15 and 16 set out the factors to be taken into consideration when the Welsh Ministers make a consent decision, including the situation where a project is likely to affect a European site, and makes provision for the timing of consent decisions.

Regulation 17 sets out the conditions which must be applied to a consent and regulation 18 sets out the procedures following the consent decision.

Regulation 19 makes provision on the treatment of transborder projects.

Regulation 20 and Schedule 4 make specific provision for the situation where, following a grant of consent, the relevant land becomes a European site.

Regulation 21 makes it an offence to begin or carry out a project without obtaining a screening decision or a consent decision (where these are required). Regulation 22 makes it an offence to breach a condition of consent. Regulation 23 makes it an offence to procure a decision by deception or to supply of false or misleading information or documents.

Regulation 24 empowers the Welsh Ministers to issue “stop notices” prohibiting persons from continuing work begun without the necessary consent. Regulation 25 makes it an offence to contravene a stop notice.

Regulation 26 empowers the Welsh Ministers to issue “remediation notices” requiring a person in breach of the Regulations to return his or her land to the condition it was in before the project was commenced or to good environmental condition or such standard as the Welsh Ministers determine reasonable in the circumstances. Regulation 27 makes it an offence to fail to comply with a remediation notice without reasonable excuse.

Regulation 28 allows prosecutions under regulations 21, 22, 23, 25 and 27 to be brought within 6 months of the date sufficient evidence comes to the prosecutor’s knowledge. But prosecutions must be brought within 2 years of the date on which the offence is committed.

Regulation 29 provides powers of entry and inspection in connection with enforcement, and allows the removal of documents and of plant and soil specimens. It permits the Welsh Ministers to carry out works required by a remediation notice which have not been done within the required timescale, and to recover the costs. It requires persons whose land is being entered and inspected to assist authorised persons, and makes it an offence intentionally to obstruct or impede them or to fail to provide them with assistance without reasonable excuse.

Regulations 30 and 31 set out appeals provisions and procedures. Schedule 5 makes provision for when appeals are conducted by an appointed person. Regulations 32 and 33 respectively set out further procedures for appeals by written representations and appeals by hearing or local inquiry.

Regulation 34 provides that a person aggrieved by a decisions that a project is not a significant project, or a decision granting consent for a project, may appeal to the High Court.

Regulation 36 amends the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004 (S.I. 2004/3280 (W.284)) as a consequence of the coming into force of these Regulations.

Regulation 37 revokes the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Wales) Regulations 2002 (S.I 2002/2127, (W.214)) amended by S.I 2007/203 (W.17)).

Regulation 38 makes transitional provision.