
WELSH STATUTORY INSTRUMENTS

2016 No. 55

The Developments of National Significance
(Procedure) (Wales) Order 2016

PART 1

Preliminary

Title, commencement and application

1.—(1) The title of this Order is the Developments of National Significance (Procedure) (Wales) Order 2016 and it comes into force immediately after the Application of Enactments Order comes into force.

(2) This Order applies where—

- (a) an application is made to the Welsh Ministers under section 62D of the 1990 Act (developments of national significance: applications to be made to the Welsh Ministers)(**1**); or
- (b) such an application is proposed to be made.

(3) Where the land is the subject of a special development order, whether made before or after the commencement of this Order, this Order will apply to that land only to such extent and subject to such modifications as may be specified in the special development order(**2**).

Interpretation

2. In this Order—

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

“the 2004 Act” (“*Deddf 2004*”) means the Planning and Compulsory Purchase Act 2004;

“the 2012 Order” (“*Gorchymyn 2012*”) means the Town and Country Planning (Development Management Procedure) (Wales) Order 2012(**3**);

“the EIA Regulations” (“*y Rheoliadau AEA*”) means the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016(**4**)

“the Application of Enactments Order” (“*y Gorchymyn Cymhwyso Deddfau*”) means the Developments of National Significance (Application of Enactments) (Wales) Order 2016(**5**);

“address” (“*cyfeiriad*”) has the meaning given in article 3(1)(a);

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

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

(2) “Special development order” (“*gorchymyn datblygu arbennig*”) means an order under section 59(3)(b) of the 1990 Act.

(3) S.I. 2012/801 (W. 110).

(4) S.I. 2016/58 (W. 28).

(5) S.I. 2016/54 (W. 24).

“building” (“*adeilad*”) includes any structure or erection, and any part of a building, as defined in this article, but does not include plant or machinery or any structure in the nature of plant or machinery;

“community consultee” (“*ymgynghorai cymunedol*”) means—

- (a) each county or county borough councillor representing an electoral ward in which the land to which the proposed application relates is situated; and
- (b) each community council in whose area the land to which the proposed application relates is situated;

“design and access statement” (“*datganiad dylunio a mynediad*”) has the meaning given in article 14(1);

“electronic communication” (“*cyfathrebiad electronig*”) has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation)(6);

“electoral ward” (“*ward etholiadol*”) means any area for which a councillor is elected to a county council or a county borough council in Wales;

“environmental statement” (“*datganiad amgylcheddol*”) has the meaning given in regulation 2(1) of the EIA Regulations;

“erection” (“*codi*”), in relation to buildings as defined in this article, includes extension, alteration or re-erection;

“local planning authority” (“*awdurdod cynllunio lleol*”), except in the case of articles 25 and 26, means the local planning authority to which, but for section 62D of the 1990 Act, the application would be made;

“mining operations” (“*gweithrediadau mwyngloddio*”) means the winning and working of minerals in, on or under land, whether by surface or underground working;

“notification of proposed development” (“*hysbysiad o ddatblygiad arfaethedig*”) has the meaning given in article 5(2);

“representation period” (“*cyfnod sylwadau*”) has the meaning given in article 4;

“screening direction” (“*cyfarwyddyd sgrinio*”) has the same meaning given in regulation 2(1) of the EIA Regulations;

“by site display” (“*drwy arddangos ar y safle*”) means by the posting of the notice by firm affixture to some object, sited and displayed in such a way as to be easily visible and legible by members of the public;

“specialist consultee” (“*ymgynghorai arbenigol*”) means, in circumstances where the development(7) to which the application or proposed application relates falls within a category set out in the Table in Schedule 5, the authority, person or body mentioned in relation to that category; and

“working day” (“*diwrnod gwaith*”) means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday in Wales.

Electronic communications

3.—(1) In this Order, and in relation to the use of electronic communications for any purpose of this Order which is capable of being effected electronically—

(6) 2000 c. 7; section 15(1) was amended by section 406(1) of, and paragraph 158 of Schedule 17 to, the Communications Act 2003 (c. 21).

(7) For the definition of “development” (“*datblygiad*”) see section 55 of the 1990 Act. See also regulation 56 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 (S.I. 2016/58) (W. 28).

(a) the expression “address” (“*cyfeiriad*”) includes any number or address used for the purposes of such communications;

(b) references to notices, representations or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (7) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in this Order to give or send any statement, notice or other document to any other person (“the recipient”).

(3) The requirement is taken to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(4) In paragraph (3), “legible in all material respects” (“*darllenadwy ym mhob modd perthnasol*”) means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(5) Where the electronic communication is received by the recipient outside the recipient’s business hours, it will be taken to have been received on the next working day.

(6) A requirement in this Order that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” (“*ysgrifenedig*”) and cognate expressions are to be construed accordingly.

(7) Except where a hard copy is expressly required, a requirement in this Order to send more than one copy of a statement or other document is complied with by sending one copy only of the statement or other document in question in electronic form.

Representation period

4.—(1) Subject to paragraph (2), the “representation period” (“*cyfnod sylwadau*”) is the period of 5 weeks beginning with the day on which the Welsh Ministers give notice in accordance with article 15(2) that they accept an application.

(2) The Welsh Ministers may in any particular case give a direction which extends the representation period.

PART 2

Pre-application

Notification of proposed development

5.—(1) An applicant must notify the Welsh Ministers and local planning authority of a proposed application in accordance with the following provisions of this article.

(2) The notification (“notification of proposed development”) (“*hysbysiad o ddatblygiad arfaethedig*”) must consist of—

(a) the form published for this purpose by the Welsh Ministers (or a form substantially to the like effect), including the particulars specified or referred to in the form;

(b) a plan which identifies the land to which the application relates; and

(c) either—

(i) a statement confirming that an environmental statement will be provided; or

(ii) a screening direction.

(3) Such notification must be accompanied by any fee required to be paid in relation to the giving of such notification.

Acceptance of notification of proposed development

6.—(1) Where an applicant notifies the Welsh Ministers of a proposed application in accordance with article 5, the Welsh Ministers must give notice to the applicant and local planning authority of their acceptance of that notification in accordance with the following provisions of this article.

(2) Such notice must be given in writing within 10 working days, beginning with the day of receipt of the notification by the Welsh Ministers (or such longer period as the Welsh Ministers may in any particular case determine).

(3) Where the Welsh Ministers give notice in accordance with this article and the applicant does not make an application within 12 months, beginning with the date on which the notice is given, the notice is to be taken as having lapsed, and in such circumstances the applicant must give a fresh notification of proposed development in accordance with article 5 before any application may be made.

(4) Where the Welsh Ministers consider that they have received notification of proposed development which is not in accordance with article 5, they must within 10 working days, beginning with the day of receipt of the notification by the Welsh Ministers (or such longer period as the Welsh Ministers may in any particular case determine) inform the following in writing that such notification is not accepted —

- (a) the applicant;
- (b) the local planning authority; and
- (c) any other persons that the Welsh Ministers consider appropriate.

Requirement to carry out pre-application consultation

7. Development of national significance⁽⁸⁾ is specified for the purposes of section 61Z of the 1990 Act (Wales: requirement to carry out pre-application consultation).

Publicity before applying for planning permission

8.—(1) The applicant must publicise the proposed application by—

- (a) giving requisite notice—
 - (i) by site display in at least one place on or near the land to which the proposed application relates for not less than 42 days;
 - (ii) in writing to any owner or occupier of any land adjoining the land to which the proposed application relates: and
 - (iii) by publication of the notice in a newspaper circulating in the locality in which the land to which the proposed application relates is situated; and
- (b) publishing the following information on a website maintained by the applicant, for not less than 42 days beginning with each day on which each of the notices referred to in subparagraph (a) or article 9(2) are given—
 - (i) the draft application form published by the Welsh Ministers under article 12(1)(a) (or a form substantially to the like effect), including the particulars specified in or referred to in the form;

(8) See section 62D(3) of the 1990 Act and the Specified Criteria and Prescribed Secondary Consents Regulations.

- (ii) a plan which identifies the land to which the proposed application relates;
- (iii) any other plans, drawings and information necessary to describe the development which is the subject of the proposed application;
- (iv) a copy of the notice required by article 6 which has not lapsed under paragraph (3) of that article;
- (v) the design and access statement required by article 14;
- (vi) subject to article 12(3), the particulars or evidence required by the Welsh Ministers under section 62(3) of the 1990 Act (applications for planning permission)(9);
- (vii) where applicable, a statement referred to as the environmental statement for the proposed development; and
- (viii) a written statement about any secondary consent(10) connected with the proposed application(11) in respect of which the applicant considers a decision on that consent is to be made or should be made by the Welsh Ministers, together with the draft application form and documents associated with such consents.

(2) The applicant must have complied with paragraph (1) before an application is submitted.

(3) Any plans or drawings required to be provided by paragraph (1)(b)(ii) or (iii) must be drawn to a scale identified by the applicant and, in the case of plans, must show the direction of north.

(4) Where the notice referred to in paragraph (1)(a)(i) is, without any fault or intention of the applicant, removed, obscured or defaced before the period of 42 days has elapsed, the applicant will be treated as having complied with the requirements of the relevant paragraph if they have taken reasonable steps to protect the notice and, if need be, replace it.

(5) In this article, “requisite notice” (“*hysbysiad gofynnol*”) means notice in the appropriate form set out in Schedule 1 or in a form substantially to the like effect.

Consultation before applying for planning permission

9.—(1) The following persons or descriptions of persons are specified for the purposes of section 61Z(4) of the 1990 Act—

- (a) any community consultee;
- (b) any specialist consultee; and
- (c) any relevant person(12).

(2) Where an applicant is required to consult a community consultee or a relevant person, the applicant must give the community consultee or the relevant person requisite notice in writing of the proposed application.

(3) Where an applicant is required to consult a specialist consultee, the applicant must give the specialist consultee requisite notice in writing of the proposed application and enclose each of the documents referred to in article 8(1)(b) or provide a link to a website on which those documents can be found.

(4) The applicant must have complied with paragraphs (2) and (3) and have given the specialist consultee time to respond in accordance with article 10(1) before an application is submitted.

(5) In this article, “requisite notice” (“*hysbysiad gofynnol*”) means—

(9) Section 62(3) was applied with modifications by article 3(1) of the Application of Enactments Order.

(10) For the definition of “secondary consent” (“*cydsyniad eilaidd*”) see section 62H of the 1990 Act. Section 62H was inserted by section 20 of the 2015 Act. Secondary consents are prescribed for the purposes of section 62H(1) by the Specified Criteria and Prescribed Secondary Consents Regulations.

(11) See section 62F(6) of the 1990 Act. Section 62F was inserted by section 20 of the 2015 Act.

(12) See section 62G(2) of the 1990 Act for the meaning of “relevant person” (“*person perthnasol*”). Section 62G was inserted by section 20 of the 2015 Act.

- (a) in relation to a community consultee or a relevant person notice in the appropriate form set out in Schedule 1; and
- (b) in relation to a specialist consultee notice in the appropriate form set out in Schedule 2, or in a form substantially to the like effect.

Duty to respond to pre-application consultation: specialist consultees

10.—(1) A specialist consultee, consulted in accordance with the provisions of section 61Z(4) of the 1990 Act, must provide a substantive response within 42 days beginning with the day on which the notice referred to in article 9(3) is given or such other period as may be agreed in writing between the specialist consultee and the applicant.

- (2) For the purposes of this article, a substantive response is one which—
 - (a) states that the specialist consultee has no comment to make;
 - (b) states that the specialist consultee has no objection to the proposed development and refers the applicant to current standing advice by the specialist consultee on the subject of the consultation;
 - (c) advises the applicant of any concerns identified in relation to the proposed development and how those concerns can be addressed; or
 - (d) advises the applicant that the specialist consultee has concerns and that it would object to an application for planning permission made in the same or substantially the same terms and sets out the reasons for those objections.

Pre-application consultation reports

11.—(1) Where an applicant submits an application to the Welsh Ministers in accordance with article 12, that application must be accompanied by a pre-application consultation report which gives particulars of—

- (a) how the applicant complied with section 61Z of the 1990 Act;
 - (b) any response to the consultation received from persons consulted under section 61Z(3) or (4) of the 1990 Act; and
 - (c) the account taken of those responses.
- (2) The pre-application consultation report must include—
- (a) a copy of the notice referred to in article 8(1)(a)(i);
 - (b) a declaration that the notice referred to in article 8(1)(a)(i) was displayed in accordance with the requirements of that article;
 - (c) a list of the addresses of the persons who were given notice of the proposed application in accordance with article 8(1)(a)(ii) and a copy of the notice given to such persons;
 - (d) a copy of the publication referred to in article 8(1)(a)(iii);
 - (e) a declaration that the applicant has complied with the publication requirements in article 8(1)(b);
 - (f) copies of all notices given to community consultees, relevant persons and specialist consultees in accordance with articles 9(2) and 9(3);
 - (g) a summary of all issues raised by any person notified of the proposed application in accordance with section 61Z(3) of the 1990 Act and articles 8 and 9(2), including confirmation of whether the issues raised have been addressed and, if so, how; and
 - (h) copies of all responses received from specialist consultees with an explanation of the account taken of each response.

PART 3

Applications

Applications: general requirements

- 12.**—(1) An application must consist of —
- (a) the application form published by the Welsh Ministers (or a form substantially to the like effect), including the particulars specified or referred to in the form;
 - (b) except in the case of an application made pursuant to section 73 of the 1990 Act (determination of applications to develop land without compliance with conditions previously attached)(**13**)—
 - (i) a plan which identifies the land to which the application relates;
 - (ii) any other plans, drawings and information necessary to describe the development which is the subject of the application;
 - (iii) a copy of the notice required by article 6 which has not lapsed under paragraph (3) of that article;
 - (iv) a design and access statement in accordance with article 14;
 - (v) the certificate required by article 17;
 - (vi) the pre-application consultation report required by article 11;
 - (vii) the particulars or evidence required by the Welsh Ministers under section 62(3) of the 1990 Act;
 - (viii) where applicable, an environmental statement;
 - (ix) a written statement about secondary consents connected with the proposed application in respect of which the applicant considers a decision is to be made or should be made by the Welsh Ministers; and
 - (x) a written statement about the status of discussions between the applicant and the local planning authority in respect of obligations under section 106 of the 1990 Act (planning obligations)(**14**).
- (2) Any plans or drawings required to be provided by paragraph (1)(b)(i) or (1)(b)(ii) must be drawn to a scale identified by the applicant and, in the case of plans, must show the direction of north.
- (3) Paragraph (1)(b)(vii) only applies if—
- (a) before the application is made the Welsh Ministers publish a list of requirements on their website; and
 - (b) the particulars or evidence that the Welsh Ministers require to be included in the application fall within that list.
- (4) An application for development which includes mining operations or the use of land for mineral-working deposits(**15**) must consist of—
- (a) the application form published by the Welsh Ministers (or a form substantially to the like effect), including the particulars specified or referred to in the form; and

(13) Section 73 was amended by sections 42(2), 51(3), 120 of, and Schedule 9 to, the 2004 Act and section 35(7) of the 2015 Act and was applied with modifications by article 3(1) of the Application of Enactments Order. Applications made pursuant to section 73 which are to be treated as nationally significant development in accordance with section 62D(6) of the 1990 Act, are those of a description specified in regulation 51 of the Developments of National Significance (Wales) Regulations 2016 (S.I. 2016/56) (W. 26).

(14) Section 106 was substituted by section 12(1) of the 1991 Act and amended by section 174(2) of the 2008 Act and section 7 of, paragraph 3 of Schedule 2 to, the Growth and Infrastructure Act 2013 (c. 27).

(15) For the definition of “mineral-working deposit” see section 336 of the 1990 Act.

- (b) except in the case of an application made pursuant to section 73 of the 1990 Act, the documents referred to in paragraph (1)(b).
- (5) Where an application is made by electronic communications, the applicant must on the same day as making the application deposit one hard copy of the application with—
 - (a) the Welsh Ministers; and
 - (b) the local planning authority.
- (6) The applicant must, as soon as reasonably practicable, confirm their compliance with the requirement in paragraph (5)(b) to the Welsh Ministers in writing.
- (7) Where the Welsh Ministers receive an application, they must as soon as practicable notify the local planning authority of its receipt.
- (8) An application must be accompanied by any fee payable in respect of—
 - (a) the initial administration of the application; and
 - (b) any local impact report required under section 62I(2) of the 1990 Act.

Applications in respect of Crown land

- 13. An application in respect of Crown land must be accompanied by—
 - (a) a statement that the application is made in respect of Crown land; and
 - (b) where the application is made by a person authorised in writing by the appropriate authority, a copy of that authorisation.

Design and access statements

- 14.—(1) An application must include a statement (“a design and access statement”) (“*datganiad dylunio a mynediad*”) which complies with paragraph (2).
- (2) A design and access statement must—
 - (a) explain the design principles and concepts that have been applied to the development;
 - (b) demonstrate the steps taken to appraise the context of the development and how the design of the development takes that context into account;
 - (c) explain the policy or approach adopted as to access, and how policies relating to access in the development plan(16) have been taken into account; and
 - (d) explain how any specific issues which might affect access to the development have been addressed.

Acceptance of applications

- 15.—(1) The Welsh Ministers are to be taken as having received a “valid application” when they are in receipt of each of the following—
 - (a) an application which is in accordance with article 12(1);
 - (b) any fee required to be paid in respect of pre-application services provided under the Developments of National Significance (Wales) Regulations 2016(17);
 - (c) the fee referred to in article 5(3); and
 - (d) the fees referred to in article 12(8)(a).

(16) See sections 38 and 62 of the 2004 Act.

(17) S.I. 2016/56 (W. 26).

(2) Where the Welsh Ministers receive a valid application, they must give notice of their acceptance of the application (“notice of acceptance”) (“*hysbysiad derbyn*”) to the applicant and the local planning authority in accordance with paragraph (4).

(3) It is the giving of such notice in accordance with paragraph (2) that constitutes acceptance of the application for the purposes of section 62L(3) of the 1990 Act (timetable for determining applications) (and the date the notice is given constitutes the date of acceptance).

(4) Notice of acceptance —

- (a) must be given in writing within the relevant period;
- (b) must confirm that the application is accepted; and
- (c) may include such other information related to the application as the Welsh Ministers consider appropriate.

(5) Where the Welsh Ministers consider that an application they have received is not a valid application, they must within the relevant period notify the following that the application is not accepted—

- (a) the applicant;
- (b) the local planning authority; and
- (c) any other persons that the Welsh Ministers consider appropriate.

(6) Notification given under paragraph (5) must include the reasons why the Welsh Ministers consider that the application received is not a valid application.

(7) In this article, “the relevant period” (“*y cyfnod perthnasol*”) is—

- (a) in a case where the application is accompanied by an environmental statement, 42 days, beginning with the day on which the Welsh Ministers are in receipt of an application, or such longer period as the Welsh Ministers may determine; or
- (b) in a case where the application is not accompanied by an environmental statement, 28 days, beginning with the day on which the Welsh Ministers are in receipt of an application, or such longer period as the Welsh Ministers may determine.

Notices of applications for planning permission

16.—(1) Subject to paragraph (2), an applicant must give requisite notice of the application to any person (other than the applicant) who on the prescribed date is an owner of any of the land to which the application relates, or a tenant—

- (a) by serving the notice on every such person whose name and address is known to the applicant; and
- (b) where the applicant has taken reasonable steps to ascertain the names and addresses of every such person, but has been unable to do so, by publication of the notice after the prescribed date in a newspaper circulating in the locality in which the land to which the application relates is situated.

(2) In the case of an application consisting of the winning and working of minerals by underground operations, instead of giving notice in the manner provided for by paragraph (1), the applicant must give requisite notice of the application to any person (other than the applicant) who on the prescribed date is an owner of any of the land to which the application relates, or a tenant—

- (a) by serving the notice on every such person whom the applicant knows to be such a person and whose name and address is known to the applicant;
- (b) by publication of the notice after the prescribed date in a newspaper circulating in the locality in which the land to which the application relates is situated; and

(c) by site display in at least one place in every community within which there is situated any part of the land to which the application relates, leaving the notice in position for not less than 7 days in the period of 21 days immediately preceding the making of the application to the Welsh Ministers.

(3) The notice required by paragraph (2)(c) must (in addition to any other matters required to be contained in it) state the address of the website where a copy of the application, and of all plans and other documents submitted with it, will be published.

(4) Where the notice is, without any fault or intention of the applicant, removed, obscured or defaced before the period of 7 days referred to in paragraph (2)(c) has elapsed, the applicant will be treated as having complied with the requirements of that paragraph if the applicant has taken reasonable steps to protect the notice and, if need be, replace it.

(5) The date prescribed for the purposes of section 65(2) of the 1990 Act (notice etc of applications for planning permission), and the “prescribed date” (“*dyddiad rhagnodedig*”) for the purposes of this article, is the day 21 days before the date of the application.

(6) The applications prescribed for the purposes of paragraph (c) of the definition of “owner” (“*perchennog*”) in section 65(8) of the 1990 Act are minerals applications, and the minerals prescribed for the purposes of that paragraph are any minerals other than oil, gas, coal, gold or silver.

(7) In this article—

“minerals application” (“*cais mwynau*”) means an application for development consisting of the winning and working of minerals;

“requisite notice” (“*hysbysiad gofynnol*”) means notice in the appropriate form set out in Schedule 3 (or in a form substantially to the like effect), but will not include notice served using electronic communications; and

“tenant” (“*tenant*”) means an agricultural tenant as defined in section 65(8) of the 1990 Act, of land any part of which is comprised in the land to which an application relates.

Certificates in relation to notices of applications

17.—(1) Where an application is made, the applicant must certify, in a form published by the Welsh Ministers (or in a form substantially to the like effect), that the requirements of article 16 have been satisfied.

(2) If an applicant has cause to rely on paragraph (5) of article 16, the certificate must state the relevant circumstances.

Publicity for applications for planning permission: Welsh Ministers

18.—(1) An application must be publicised by the Welsh Ministers in the manner prescribed by this article.

(2) An application must be publicised by giving requisite notice—

(a) by publication, within the relevant period, of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated;

(b) by serving the notice, within the relevant period, on any adjoining owner or occupier.

(3) The following information must be published on a website maintained by the Welsh Ministers—

(a) the address and location of the proposed development;

(b) a description of the proposed development;

(c) the date by which any representations about the application must be received;

- (d) where and when the application may be inspected; and
 - (e) how representations may be made about the application.
- (4) In this article—
- “adjoining owner or occupier” (“*perchennog neu feddianydd cyffiniol*”) means an owner or occupier of any land adjoining the land to which the application relates;
 - “the relevant period” (“*y cyfnod perthnasol*”) means 5 working days, beginning with the day on which the Welsh Ministers accept the application in accordance with article 15(3); and
 - “requisite notice” (“*hysbysiad gofynnol*”) means notice in the appropriate form set out in Schedule 4 (or in a form substantially to the like effect).

Publicity for applications for planning permission: local planning authority

19.—(1) An application must be publicised by the local planning authority in the manner prescribed by this article.

(2) The local planning authority must give notice by site display, in a form supplied to them by the Welsh Ministers, in at least one place in its area which is on or near the land to which the application relates for not less than 21 days.

(3) Where the local planning authority has satisfied the requirement in paragraph (2), they must inform the Welsh Ministers in writing that they have done so within 5 working days, beginning with the day on which the notice is given.

(4) Where the local planning authority fails to comply with the requirement in paragraph (2), the Welsh Ministers may take the steps required of the authority by that paragraph in place of the authority.

(5) Where the notice is, without any fault or intention of the local planning authority (or the Welsh Ministers, as the case may be in accordance with paragraph (4)), removed, obscured or defaced before the period of 21 days referred to in paragraph (2) has elapsed, they will be treated as having complied with the requirements of that paragraph if they have taken reasonable steps to protect the notice and, if need be, replace it.

Register of applications

20.—(1) The local planning authority must within the relevant period place on the register required to be kept under article 29 of the 2012 Order a copy of—

- (a) any application made to the Welsh Ministers;
 - (b) any notification of receipt of an application given by the Welsh Ministers under article 12(7);
 - (c) any notice of acceptance given by the Welsh Ministers in relation to an application under article 15(2);
 - (d) any notification that an application is not accepted so given under article 15(5);
 - (e) any written notice of a decision given in relation to an application under article 29; and
 - (f) any revised notice of a decision to grant planning permission given under article 30.
- (2) In this article, “the relevant period” (“*y cyfnod perthnasol*”) is 5 working days, beginning with—
- (a) in a case where an application, notification or notice of the kind referred to in paragraph (1) (a) to (e) is made or given, the day on which the local planning authority receives the application, notification or notice; or

- (b) in a case where a notice referred to in paragraph (1)(f) is given, the day on which the local planning authority gives such notice.

Representations received by the local planning authority in respect of applications

21. Where representations in relation to an application are received by the local planning authority they must, as soon as is practicable, forward the representations to the Welsh Ministers at the address notified to the authority by the Welsh Ministers for that purpose.

PART 4

Consultations before the grant of permission

Duty to consult before the grant of permission

22.—(1) The Welsh Ministers must, within the representation period, consult any specialist consultee, except where a specialist consultee has advised the Welsh Ministers that it does not wish to be consulted.

(2) The exception in paragraph (1) does not apply where, in the opinion of the Welsh Ministers, development falls within paragraph (t) of the Table in Schedule 5.

(3) The Welsh Ministers may in any case or class of case also consult any authority, body or person in addition to those specified in Schedule 5.

(4) Where, by or under this article, the Welsh Ministers are required to consult any specialist consultee before granting planning permission—

- (a) they must give notice of the application to the specialist consultee; and
- (b) they must not determine the application until at least 21 days after the date on which the notice is given under sub-paragraph (a).

(5) The Welsh Ministers must in determining the application take into account any representations received from a specialist consultee.

Duty to respond to consultation

23.—(1) The requirement to consult in article 22(1) and (2) is prescribed for the purposes of section 54(2)(b) of the 2004 Act (duty to respond to consultation).

(2) For the purposes of section 54(4)(a) of the 2004 Act the period prescribed is—

- (a) 21 days, beginning with the earlier of—
 - (i) the day on which notice referred to in article 22(4)(a) is given; or
 - (ii) the date of service of a copy of the application on the specialist consultee; or
- (b) such other period as may be agreed in writing between the specialist consultee and the Welsh Ministers.

(3) For the purposes of this article and pursuant to section 54(5)(c) of the 2004 Act, a substantive response is one which—

- (a) where no consultation for the purposes of section 61Z of the 1990 Act has taken place, or the specialist consultee has failed to give a response in accordance with article 10—
 - (i) states that the specialist consultee has no comment to make;

- (ii) states that the specialist consultee has no objection to the proposed development and refers the Welsh Ministers to current standing advice by the specialist consultee on the subject of the consultation;
 - (iii) advises the Welsh Ministers of any concerns identified in relation to the proposed development and how those concerns can be addressed by the applicant;
 - (iv) advises that the specialist consultee objects to the proposed development and sets out the reasons for the objection; or
- (b) where consultation for the purposes of section 61Z of the 1990 Act has taken place and the specialist consultee has given a response in accordance with article 10—
- (i) states that the specialist consultee has no further comment to make in respect of the proposed development and confirms that any comments made under article 10 remain relevant;
 - (ii) advises the Welsh Ministers of any new concerns identified in relation to the proposed development, why the concerns were not identified in the response given in accordance with article 10 and—
 - (aa) how concerns can be addressed by the applicant; or
 - (bb) that the specialist consultee objects to the proposed development and sets out the reasons for the objection.

Duty to respond to consultation: annual reports

24.—(1) Each specialist consultee which is, by virtue of section 54 of the 2004 Act and article 23, under a duty to respond to consultation must give to the Welsh Ministers, not later than 1 July in each year, beginning with the 1 July 2017, a report as to that specialist consultee’s compliance with section 54(4) of the 2004 Act.

(2) Each specialist consultee which is, by virtue of article 10 under a duty to respond to pre-application consultation must, in the report given to the Welsh Ministers in accordance with paragraph (1), include a report as to the specialist consultee’s compliance with that article.

(3) The report must relate to the period of 12 months commencing on 1 April in the preceding year (“the report year”).

(4) The report must contain, in respect of any report year, a statement as to—

- (a) the number of occasions on which the specialist consultee was consulted;
- (b) the number of occasions on which a substantive response was provided;
- (c) when the substantive response was provided; and
- (d) the number of occasions on which the specialist consultee gave—
 - (i) a substantive response outside the period prescribed for the purposes of section 54(4) of the 2004 Act or, as the case may be, the period specified in or referred to in article 10(1); and
 - (ii) a summary of the reasons why.

(5) In this article “substantive response” (“*ymateb o sylwedd*”) means either a substantive response to the applicant or a substantive response to the Welsh Ministers or both in accordance with articles 10 and 23.

PART 5

Reports

Local impact reports

25.—(1) A local impact report required in relation to an application by section 62I(2) and (4) of the 1990 Act (requirement to submit local impact report) must comply with this article.

(2) Such report must—

(a) include a description of—

- (i) the relevant planning history of the land to which the application relates;
- (ii) any local designations relevant to the land to which the application relates;
- (iii) the likely impact of any application in relation to a secondary consent (whether made to, or referred to, the Welsh Ministers under section 62F of the 1990 Act) being granted;

(b) specify any—

- (i) locally applicable planning policies, guidance and other documents relevant to the application; and
- (ii) draft conditions or obligations to which the relevant local planning authority⁽¹⁸⁾ considers the application should be subject, if it were granted, which would mitigate any likely impacts of the proposed development on the area (or part of the area) of the authority; and

(c) include—

- (i) a copy of the notice required to be displayed under article 19(2);
- (ii) a photograph of the notice on display; and
- (iii) a description of the location of the notice by reference to a map.

(3) The step taken by the Welsh Ministers for the purposes of section 62I of the 1990 Act is giving notice of acceptance in accordance with article 15(3).

Voluntary local impact reports

26.—(1) Any community council, or local planning authority, submitting a voluntary local impact report under section 62J(2) of the 1990 Act (duty to have regard to local impact report) must do so within the representation period.

(2) Such report must—

(a) include a description of the likely impact of any application in relation to a secondary consent (whether made to, or referred to, the Welsh Ministers under section 62F of the 1990 Act) being granted; and

(b) specify any—

- (i) locally applicable planning policies, guidance and other documents relevant to the application; and
- (ii) draft conditions or obligations to which the authority or council consider the application, if granted, should be subject for the purpose of mitigating any likely

⁽¹⁸⁾ See section 62I(5) of the 1990 Act for the meaning of “relevant local planning authority” (“awdurdod cynllunio lleol perthnasol”) for the purposes of section 62I(2).

impacts of the proposed development on the area (or part of the area) of the council or authority.

PART 6

Variation of applications

Procedure in respect of variation of applications

27.—(1) Subject to the following provisions of this article, an application may, with the agreement of the Welsh Ministers, be varied after it is made.

(2) An applicant may only propose the variation of a particular application to the Welsh Ministers on one occasion.

(3) An applicant proposing variation of an application must notify the Welsh Ministers in writing within the 10 working days which follow the expiry of the representation period.

(4) Such notification (“notification of intention to vary”) (*“hysbysiad o fwriad i amrywio”*) must—

- (a) be given on a form published by the Welsh Ministers (or a form substantially to the like effect);
- (b) provide a description of the variation that the applicant wishes the Welsh Ministers to accept for their consideration; and
- (c) be accompanied by any fee required to be paid in relation to the giving of such notification.

(5) The Welsh Ministers must, within 5 working days of receipt of notification of intention to vary given in accordance with paragraph (4), give notice to the applicant indicating whether the Welsh Ministers will accept the proposed variation for the purpose of considering whether or not they agree to the variation.

(6) Where the Welsh Ministers give notice under paragraph (5) which confirms that they will not accept the proposed variation for the purposes of considering whether or not they agree to the variation, it is the application as originally made under article 12 that falls to be determined by the Welsh Ministers.

(7) Where the Welsh Ministers give notice under paragraph (5) which confirms that they will accept the proposed variation for the purposes of considering whether or not they agree to the proposed variation, the applicant must formally submit the proposed variation to the Welsh Ministers within 28 days, beginning with the day on which the notice is given.

(8) Where the Welsh Ministers consider the proposed variation to be such that there is a substantial change in the nature of the development for which planning permission is sought, they must not agree to the variation.

(9) The Welsh Ministers may consult on any variation proposed by an applicant with such persons, and in such manner, as they consider appropriate.

(10) The Welsh Ministers may, when an application is varied under this article, give such notice of the variation as they consider appropriate.

PART 7

Determination and notification of initiation of development

Representations to be taken into account

28.—(1) The Welsh Ministers must, in determining an application, take into account any representation made in response to—

- (a) notice given by site display under article 16 or 19;
- (b) notice served on—
 - (i) an owner of the land or tenant under article 16; or
 - (ii) an adjoining owner or occupier under article 18;
- (c) notice or information published in a newspaper under article 16 or 18 or on a website under article 18.

(2) The requirement in paragraph (1) applies only where the representations in question are received during the representation period.

(3) The Welsh Ministers may disregard any representation made after the expiry of the representation period.

(4) The representations and periods referred to in this article are representations and periods prescribed for the purposes of section 71(2)(a) of the 1990 Act (consultations in connection with determinations under section 70).

Written notice of decision relating to an application

29.—(1) Subject to paragraph (2), where the Welsh Ministers accept an application in accordance with article 15, they must give the applicant and local planning authority notice of their decision.

(2) Paragraph (1) does not apply in a case where an application is withdrawn or deemed to be withdrawn⁽¹⁹⁾.

(3) When the Welsh Ministers give notice of a decision on an application and planning permission is either granted subject to conditions or the application is refused, the notice must state clearly and precisely the full reasons for the refusal or for any condition imposed specifying all policies and proposals in the development plan which are relevant to the decision.

(4) Where—

- (a) the applicant has submitted an environmental statement; and
- (b) the Welsh Ministers have decided (having taken environmental information into consideration) to grant permission (whether unconditionally or subject to conditions),

the notice given to the applicant in accordance with this article must include a statement that environmental information has been taken into consideration by the Welsh Ministers.

(5) In this article, “environmental information” (“*gwybodaeth amgylcheddol*”) has the meaning given in regulation 2(1) of the EIA Regulations.

Revised notice of decision to grant planning permission

30.—(1) The person specified for the purposes of section 71ZA(5) of the 1990 Act (decision notices) is the applicant.

⁽¹⁹⁾ See regulations 10(9) and 12(8) of the Developments of National Significance (Fees) (Wales) Regulations 2016 (S.I. 2016/57) (W.27) in respect of the deemed withdrawal of applications.

(2) For the purposes of section 71ZA(6) the details to be included in the revised version of the notice of a decision to grant planning permission are—

- (a) the reference number;
- (b) the date and effect of the decision;
- (c) the name of the body that made the decision; and
- (d) the revision number.

Notification of initiation of development and display of notice

31.—(1) A planning permission for development of national significance is specified for the purposes of section 71ZB(6) of the 1990 Act.

(2) The notice to be given to a local planning authority before beginning any development to which a relevant planning permission relates, in accordance with section 71ZB(1) of the 1990 Act, must be in the form set out in Schedule 6 (or in a form substantially to the like effect).

(3) The notice to be displayed at all times when development to which a relevant planning permission relates is being carried out in accordance with section 71ZB(2) of the 1990 Act must—

- (a) be in the form set out in Schedule 7 (or in a form substantially to the like effect);
- (b) be firmly affixed and displayed in a prominent place at or near the place where the development is being carried out;
- (c) be legible and easily visible to the public without having to enter the site; and
- (d) be printed on durable material.

(4) Where the notice to be displayed is, without any fault or intention of the person carrying out development, removed, obscured or defaced, the person will be treated as having complied with the requirements of sub-paragraphs (b) and (c) of paragraph (3) if they have taken reasonable steps to protect the notice and, if need be, replace it.

PART 8

Amendment to 2012 Order

Amendment to the 2012 Order

32.—(1) The 2012 Order is amended as follows.

(2) After article 1(3) insert—

(3)

“(4) Nothing in this Order, except for articles 29 and 30, applies where—

- (a) an application is made to the Welsh Ministers under section 62D of the 1990 Act (developments of national significance: applications to be made to the Welsh Ministers); or
- (b) such an application is proposed to be made.”

27 January 2016

Carl Sargeant
Minister for Natural Resources, one of the Welsh
Ministers