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WELSH STATUTORY INSTRUMENTS

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**2016 No. 58**

**The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016**

**PART 1**

**General**

**Title, commencement and application**

1.—(1) The title of these Regulations is the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016.

(2) These Regulations come into force on 1 March 2016 except for regulation 38, Schedule 5 (local development orders) and Schedule 9, paragraph 8(3) which come into force on the date on which the Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016 comes into force.

(3) These Regulations apply in relation to Wales.

(4) In relation to an application for planning permission made to the Welsh Ministers, Parts 2 to 7 of these Regulations apply only to the extent and in the way set out in Part 8.

**Interpretation**

2.—(1) In these Regulations—

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

“the 1991 Act” (“*Deddf 1991*”) means the Planning and Compensation Act 1991(1);

“the 1995 Act” (“*Deddf 1995*”) means the Environment Act 1995(2);

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

“the 2016 Order” (“*Gorchymyn 2016*”) means the Developments of National Significance (Procedure) (Wales) Order 2016(4);

“any other information” (“ *unrhyw wybodaeth arall*”) means any other substantive information relating to the environmental statement and provided by the applicant or the appellant as the case may be;

“any particular person” (“ *unrhyw berson penodol*”) includes any non-governmental organisation promoting environmental protection;

“by local advertisement” (“ *drwy hysbyseb lleol*”), in relation to a notice, means—

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(1) 1991 c. 34.

(2) 1995 c. 25.

(3) S.I. 2012/801 (W. 110); amended by S.I. 2015/1330 (W. 123); there are other amending instruments but none is relevant.

(4) S.I. 2016/55 (W. 25).

- (a) by publication of the notice in a newspaper circulating in the locality in which the land is situated; and
- (b) where the relevant planning authority maintains a website for the purpose of advertisement of applications, by publication of the notice on the website;

“commencement date” (“*dyddiad cychwyn*”) means 1 March 2016;

“the consultees” (“*yr ymgynghoreion*”) means—

- (a) in respect of an application for planning permission made to the Welsh Ministers, any authority, body or person which they are required to consult by virtue of article 22 of the 2016 Order and the bodies referred to in sub-paragraph (c) if not already within this sub-paragraph;
- (b) any body which the relevant planning authority is required to consult, or would, if an application for planning permission for the development in question were before them, be required to consult by virtue of article 14 of the 2012 Order (consultations before the grant of permission) or of any direction under that article and the bodies referred to in sub-paragraph (c) if not already within this sub-paragraph;
- (c) the following bodies—
  - (i) any principal council for the area where the land is situated, if not the relevant planning authority;
  - (ii) the Natural Resources Body for Wales<sup>(5)</sup>;
  - (iii) other bodies designated by statutory provision as having specific environmental responsibilities and which the relevant planning authority or the Welsh Ministers, as the case may be, consider are likely to have an interest in the application;

“the Directive” (“*y Gyfarwydddeb*”) means Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment, as adopted on 13 December 2011;

“dwellinghouse” (“*ty annedd*”) means a building or part of a building which is used as a single private dwelling and for no other purpose;

“EIA application” (“*cais AEA*”) means—

- (a) an application for planning permission for EIA development; or
- (b) a subsequent application in respect of EIA development;

“EIA development” (“*datblygiad AEA*”) means development which is either—

- (a) Schedule 1 development; or
- (b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

“environmental information” (“*gwybodaeth amgylcheddol*”) means the environmental statement, including any further information and any other information, any representations made by any consultee and any representations duly made by any other person about the environmental effects of the development;

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

- (a) that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant or initiating body can reasonably be required to compile, having regard in particular to current knowledge and methods of assessment, but
- (b) that includes at least the information referred to in Part 2 of Schedule 4;

(5) See S.I. 2012/1903 (W. 230).

“exempt development” (“*datblygiad esempt*”) means development in respect of which the Welsh Ministers have made a direction under regulation 4(4);

“further information” (“*gwybodaeth bellach*”) has the meaning given in regulation 22(1);

“the General Regulations” (“*y >Rheoliadau Cyffredinol*”) means the Town and Country Planning General Regulations 1992(6);

“inspector” (“*arolygydd*”) means a person appointed by the Welsh Ministers to determine an appeal;

“the land” (“*y tir*”) means the land on which the development would be carried out or, in relation to development already carried out, has been carried out;

“local development order” (“*gorchymyn datblygu lleol*”) means a local development order made pursuant to section 61A of the 1990 Act(7);

“principal council” (“*prif gyngor*”) has the meaning given by section 270(1) (general provisions as to interpretation) of the Local Government Act 1972(8);

“register” (“*cofrestr*”) means a register kept pursuant to section 69 of the 1990 Act (registers of applications etc.)(9) and “appropriate register” (“*cofrestr briodol*”) means the register on which particulars of an application for planning permission for the relevant development have been placed or would be placed if such an application were made;

“relevant planning authority” (“*awdurdod cynllunio perthnasol*”) means the body to whom it falls, fell, or would fall, to determine an application for planning permission for the development in question, but for—

- (a) the development being a development of national significance for the purposes of section 62D of the 1990 Act(10); or
- (b) a direction under section 77 of the 1990 Act (reference of applications to Secretary of State)(11);

“Schedule 1 application” (“*cais Atodlen 1*”) and “Schedule 2 application” (“*cais Atodlen 2*”) mean an application for planning permission for Schedule 1 development and Schedule 2 development respectively;

“Schedule 1 development” (“*datblygiad Atodlen 1*”) means development, other than exempt development, of a description mentioned in Schedule 1;

“Schedule 2 development” (“*datblygiad Atodlen 2*”) means development, other than exempt development, of a description mentioned in Column 1 of the table in Schedule 2 where—

- (a) any part of that development is to be carried out in a sensitive area; or
- (b) any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively met or exceeded in relation to that development;

“scoping direction” (“*cyfarwyddyd cwmpasu*”) means a written direction of the Welsh Ministers as to the information to be provided in the environmental statement;

“scoping opinion” (“*barn gwmpasu*”) means a written opinion of the relevant planning authority as to the information to be provided in the environmental statement;

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(6) S.I. 1992/1492. Relevant amending instruments are S.I. 1992/1892 and S.I. 1997/3006.

(7) Section 61A was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 40(1); sub-section (1) was repealed by the Planning Act 2008, sections 188(1), (2), 238 and Schedule 13; sub-section (2) was amended by the Planning Act 2008, section 188(1) and (3).

(8) 1972 c. 70. “Principal council” means a council elected for a county borough.

(9) Section 69 was substituted by the Planning and Compulsory Purchase Act 2004, section 188(1) and Schedule 6, paragraphs 1 and 3; section 69 was amended by the Planning Act 2008 (c. 29), section 190(1) and (4); the Localism Act 2011 (c. 20), section 237 and Part 18 of Schedule 25. There are other amendments which are not relevant to this instrument.

(10) Section 62D was inserted by section 19 of the Planning (Wales) Act 2015 (anaw 4).

(11) Section 77 was amended by the 1991 Act, Schedule 7, paragraph 18.

“screening direction” (“*cyfarwyddyd sgrinio*”) means a direction made by the Welsh Ministers as to whether development is EIA development;

“screening opinion” (“*barn sgrinio*”) means a written opinion of the relevant planning authority as to whether development is EIA development;

“sensitive area” (“*ardal sensitif*”) means any of the following—

- (a) land notified under section 28(1) (sites of special scientific interest) of the Wildlife and Countryside Act 1981(12);
- (b) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949(13);
- (c) 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(14);
- (d) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(15);
- (e) an area of outstanding natural beauty designated as such by an order made under section 82(2) (areas of outstanding natural beauty) of the Countryside and Rights of Way Act 2000(16);
- (f) a European site within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2010(17);

“subsequent application” (“*cais dilynol*”) means an application for consent, agreement or approval of a matter where the approval—

- (a) is required by or under a condition to which a planning permission is subject; and
- (b) must be obtained before all or part of the development permitted by the planning permission may be begun;

“subsequent consent” (“*caniatâd dilynol*”) means consent, agreement or approval granted pursuant to a subsequent application.

(2) Subject to paragraph (3), expressions used both in these Regulations and in the 1990 Act have the same meaning for the purposes of these Regulations as they have for the purposes of the 1990 Act.

(3) Expressions used both in these Regulations and in the Directive (whether or not also used in the 1990 Act) have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(4) In these Regulations references to the Welsh Ministers must not be construed as references to an inspector.

(5) Where a body may, or is required to, state, notify, request, confirm, inform or make representations, that body must do so in writing.

(6) Any notice or other document to be sent, served or given under these Regulations may be served or given in a manner specified in section 329 of the 1990 Act (service of notices)(18).

(12) 1981 c. 69. Section 28(1) was substituted by the Countryside and Rights of Way Act 2001 (c. 37), section 75(1) and Schedule 9, paragraph 1, and amended by the Natural Environment and Rural Communities Act 2006 (c. 16) section 105(1), Schedule 11, Part 1, paragraph 79, and by the Marine and Coastal Access Act 2009 (c. 23) section 148, Schedule 13, Part 2, paragraph 2(1).

(13) 1949 (c. 97), see section 5(3). See section 27AA for the application of section 28 in relation to land in Wales.

(14) See Command Paper 9424 and <http://whc.unesco.org/en/list>.

(15) 1979 c. 46. See the definition in section 1(11).

(16) 2000 c. 37. Section 82(2) was amended by S.I. 2013/755.

(17) S.I. 2010/490. There are amendments to regulation 8 which are not relevant to these Regulations.

(18) Section 329 was amended by the Town and Country Planning (Electronic Communications) (Wales) (No. 1) Order 2004 (S.I. 2004/3156 (W. 273)).

### **Prohibition on granting planning permission or subsequent consent without consideration of environmental information**

- 3.—(1) This regulation applies—
- (a) to every application for planning permission for EIA development received on or after the commencement date;
  - (b) to every application for planning permission for EIA development lodged by an authority pursuant to regulation 3 (applications for planning permission) of the General Regulations on or after the commencement date;
  - (c) to every subsequent application in respect of EIA development received on or after the commencement date; and
  - (d) to every subsequent application in respect of EIA development lodged by an authority pursuant to regulation 11 of the General Regulations on or after the commencement date.
- (2) For the purposes of paragraph (1), the date of receipt of an application by an authority is—
- (a) in respect of an application made under section 62D of the 1990 Act, the date of acceptance of the application in accordance with article 15 of the 2016 Order; and
  - (b) determined in accordance with article 22(3) (time periods for decisions) of the 2012 Order in respect of other applications.
- (3) The relevant planning authority or the Welsh Ministers or an inspector must not grant planning permission or subsequent consent pursuant to an application to which this regulation applies unless they have taken the environmental information into consideration, and they must state in their decision that they have done so.

## **PART 2**

### **Screening**

#### **General provisions relating to screening**

- 4.—(1) Subject to paragraphs (3) and (4), the occurrence of an event mentioned in paragraph (2) determines for the purpose of these Regulations that development is EIA development.
- (2) The events referred to in paragraph (1) are—
- (a) the submission by the applicant or appellant in relation to that development of a statement referred to by the applicant or appellant as an environmental statement for the purposes of these Regulations; or
  - (b) the adoption by the relevant planning authority of a screening opinion to the effect that the development is EIA development.
- (3) A direction of the Welsh Ministers determines for the purpose of these Regulations whether development is or is not EIA development.
- (4) The Welsh Ministers may direct that these Regulations do not apply in relation to a particular proposed development specified in the direction in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive).
- (5) Where a direction is given under paragraph (4) the Welsh Ministers must—
- (a) send a copy of any such direction to the relevant planning authority;
  - (b) make available to the public the information considered in making the direction and the reasons for making the direction;
  - (c) consider whether another form of assessment would be appropriate; and

- (d) take such steps they consider appropriate to bring the information obtained under the other form of assessment to the attention of the public.
- (6) Where a local planning authority or the Welsh Ministers have to decide under these Regulations whether Schedule 2 development is EIA development, the authority or the Welsh Ministers must take into account in making that decision such of the selection criteria set out in Schedule 3 as are relevant to the development.
- (7) Where a local planning authority adopt a screening opinion, or the Welsh Ministers make a screening direction—
- (a) that opinion or direction must be accompanied by a statement giving clearly and precisely the full reasons for that conclusion; and
  - (b) the authority or the Welsh Ministers, as the case may be, must send a copy of the opinion or direction and a copy of the statement required by sub-paragraph (a) to the person who proposes to carry out, or who has carried out, the development in question.
- (8) The Welsh Ministers may make a screening direction either—
- (a) of their own volition; or
  - (b) if requested to do so by any person.
- (9) The Welsh Ministers may direct that particular development of a description mentioned in Column 1 of the table in Schedule 2 is EIA development in spite of the fact that none of the conditions contained in sub-paragraphs (a) and (b) of the definition of “Schedule 2 development” is satisfied in relation to that development.
- (10) The Welsh Ministers must send a copy of any screening direction and a copy of the statement required by paragraph (7)(a) to the relevant planning authority.

### **Requests for screening opinions**

- 5.—(1) A person who is minded to carry out development may request the relevant planning authority to adopt a screening opinion.
- (2) A request for a screening opinion in relation to an application for planning permission must be accompanied by—
- (a) a plan sufficient to identify the land;
  - (b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
  - (c) such other information or representations as the person making the request may wish to provide or make.
- (3) A request for a screening opinion in relation to a subsequent application must be accompanied by—
- (a) a plan sufficient to identify the land;
  - (b) sufficient information to enable the relevant planning authority to identify any planning permission granted for the development in respect of which a subsequent application has been made;
  - (c) a description of the likely effects on the environment which were not identified at the time that the planning permission was granted; and
  - (d) such other information or representations as the person making the request may wish to provide or make.
- (4) An authority receiving a request for a screening opinion must, if they consider that they have not been provided with sufficient information to adopt an opinion, notify the person making the request of the points on which they require additional information.

(5) An authority must adopt a screening opinion within 21 days beginning with the date of receipt of a request made pursuant to paragraph (1) or such longer period as may be agreed in writing with the person making the request.

(6) An authority which adopts a screening opinion pursuant to paragraph (5) must send a copy to the person who made the request.

(7) Where an authority—

(a) fails to adopt a screening opinion pursuant to paragraph (5); or

(b) adopts an opinion to the effect that the development is EIA development;

the person who requested the opinion may request the Welsh Ministers to make a screening direction.

(8) The person may make a request pursuant to paragraph (7) even if the authority have not received additional information which they have sought under paragraph (4).

### **Requests for screening directions of the Welsh Ministers**

6.—(1) A person who pursuant to regulation 5(7) requests the Welsh Ministers to make a screening direction (a “person making a request”) must submit with the request—

(a) a copy of the request to the relevant planning authority under regulation 5(1) and the documents which accompanied it;

(b) a copy of any notification received under regulation 5(4) and of any response sent;

(c) a copy of any screening opinion received from the authority and of any accompanying statement of reasons; and

(d) any representations that the person wishes to make.

(2) A person making a request must send to the relevant planning authority a copy of that request and the representations that person makes to the Welsh Ministers.

(3) If the Welsh Ministers consider that sufficient information to make a screening direction has not been provided, they must give notice to the person making the request.

(4) The notice must specify the points on which additional information is required.

(5) The Welsh Ministers may also request the relevant planning authority to provide such information as they can on any of those points.

(6) The Welsh Ministers must make a screening direction within 21 days beginning with the date of receipt of a request pursuant to regulation 5(7) or such longer period as may be reasonably required.

(7) The Welsh Ministers must send a copy of any screening direction made pursuant to paragraph (6) to the person who made the request as soon as reasonably practicable.

## **PART 3**

### **Procedures Concerning Applications for Planning Permission**

#### **Applications which appear to require screening opinion**

7. Where it appears to the relevant planning authority that—

(a) an application which is before them for determination is a Schedule 1 application or a Schedule 2 application;

(b) the development in question has not been the subject of a screening opinion or screening direction; and

(c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,  
 paragraphs (4) and (5) of regulation 5 apply as if the receipt or lodging of the application were a request made under regulation 5(1).

#### **Subsequent applications where environmental information previously provided**

8.—(1) This regulation applies where it appears to the relevant planning authority that—

- (a) an application which is before them for determination—
  - (i) is a subsequent application in relation to Schedule 1 or Schedule 2 development;
  - (ii) has not itself been the subject of a screening opinion or screening direction; and
  - (iii) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations; and
- (b) the original application was accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations.

(2) Where it appears to the relevant planning authority that the environmental information already before them is adequate to assess the environmental effects of the development, they must take that information into consideration in their decision for subsequent consent.

(3) Where it appears to the relevant planning authority that the environmental information already before them is not adequate to assess the environmental effects of the development, they must serve a notice seeking further information in accordance with regulation 22(1).

#### **Subsequent applications where environmental information not previously provided**

9. Where it appears to the relevant planning authority that—

- (a) an application which is before them for determination—
  - (i) is a subsequent application in relation to Schedule 1 or Schedule 2 development;
  - (ii) has not itself been the subject of a screening opinion or screening direction; and
  - (iii) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations; and
- (b) the original application was not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

paragraphs (4) and (5) of regulation 5 apply as if the receipt or lodging of the application were a request made under regulation 5(1).

#### **Application made to a local planning authority without an environmental statement**

10.—(1) Where an EIA application before a local planning authority for determination is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, the authority must notify the applicant that the submission of an environmental statement is required.

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

(3) An authority must notify the applicant in accordance with paragraph (1)—



- (a) within 21 days beginning with the date of receipt of the application or such longer period as may be agreed in writing with the applicant; or
  - (b) where the Welsh Ministers, after the expiry of that 21 days or any longer agreed period, make a screening direction to the effect that the development is EIA development, within 7 days beginning with the date the authority received a copy of that screening direction.
- (4) An applicant receiving a notification pursuant to paragraph (1) may, within 21 days beginning with the date of the notification, write to the authority stating—
- (a) that the applicant accepts their view and is providing an environmental statement; or
  - (b) unless the condition referred to in paragraph (5) is satisfied, that the applicant is writing to the Welsh Ministers to request a screening direction.
- (5) For the purpose of paragraph (4)(b) the condition is that the Welsh Ministers have made a screening direction—
- (a) in respect of the development, in the case of an application for planning permission; or
  - (b) pursuant to a subsequent application,
  - (c) as the case may be.
- (6) If the applicant does not write to the authority in accordance with paragraph (4), the permission or subsequent consent sought is deemed to be refused at the end of the relevant 21 days, unless the condition referred to in paragraph (7) is satisfied and the deemed refusal—
- (a) is treated as a decision of the authority for the purposes of article 29(3)(c) (register of applications) of the 2012 Order; but
  - (b) does not give rise to an appeal to the Welsh Ministers under section 78 of the 1990 Act (right to appeal against planning decisions and failure to take such decisions)(19).
- (7) For the purpose of paragraph (6) the condition is that the Welsh Ministers have made a screening direction to the effect that the development is not EIA development—
- (a) in the case of an application for planning permission; or
  - (b) pursuant to a subsequent application,
- as the case may be.
- (8) Unless the Welsh Ministers make a screening direction to the effect that the development is not EIA development an authority which has given a notification in accordance with paragraph (1) must determine the relevant application only by refusing planning permission or subsequent consent if the applicant does not submit an environmental statement and comply with regulation 17(6).
- (9) A person who requests a screening direction pursuant to paragraph (4)(b) must send to the Welsh Ministers with the request copies of—
- (a) the application;
  - (b) all documents sent to the authority as part of the application;
  - (c) all correspondence between the applicant and the authority relating to the proposed development;
  - (d) a copy of any planning permission granted for the development; and
  - (e) in the case of a subsequent application, relevant documents or information relating to the planning permission granted for the development,

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(19) Section 78 was amended by the 1991 Act, section 17(2); the Planning and Compulsory Purchase Act 2004 (c. 5), section 43(2); the Localism Act 2011 (c. 20), section 121 and Schedule 12, paragraphs 1 and 11 and section 123(1) and (3); the Planning Act 2008 (c. 29), section 196(4) and Schedule 10, paragraphs 1 and 3, section 197 and Schedule 11, paragraphs 1 and 2; the Growth and Infrastructure Act 2013 (c. 27), section 1(2) and Schedule 1, paragraphs 1 and 8; the Planning (Wales) Act 2015, sections 45 and 46; and by S.I. 2014/2773 (W. 280), article 3 and Schedule 1, paragraphs 1 and 3. There is another amendment which is not relevant to this instrument.

and paragraphs (2) to (7) of regulation 6 apply to a request under this regulation as they apply to a request made pursuant to regulation 5(7).

### **Application referred to the Welsh Ministers without an environmental statement**

**11.**—(1) Where an application has been referred to the Welsh Ministers for determination under section 77 of the 1990 Act (reference of applications to the Welsh Ministers)(**20**), and it appears to the Welsh Ministers that—

- (a) it is an EIA application;
- (b) the development in question—
  - (i) has not been the subject of a screening opinion or screening direction; or
  - (ii) in the case of a subsequent application, was the subject of a screening opinion or direction before planning permission was granted to the effect that it was not EIA development; and
- (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

paragraphs (3) and (4) of regulation 6 apply as if the referral of the application were a request made by the applicant pursuant to regulation 5(7).

(2) Where an application has been referred to the Welsh Ministers for determination, and it appears to the Welsh Ministers that—

- (a) it is an EIA application,
- (b) paragraph (1)(b) does not apply; and
- (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

the Welsh Ministers must notify the applicant that the submission of an environmental statement is required and must send a copy of that notification to the relevant planning authority.

(3) The Welsh Ministers must notify the applicant in accordance with paragraph (2) within 21 days beginning with the date the application was received or such longer period as may be reasonably required.

(4) Where the Welsh Ministers are aware that any particular person is or is likely to be affected by, or has an interest in, the application, who is unlikely to become aware of it by means of electronic publication, a site notice or by local advertisement, they must notify the applicant of any such person.

(5) An applicant who receives a notification under paragraph (2) may, within 21 days beginning with the date of the notification, confirm to the Welsh Ministers that an environmental statement will be provided.

(6) If the applicant does not write in accordance with paragraph (5), the Welsh Ministers do not have a duty to deal with the application and at the end of the 21 days they must inform the applicant that no further action is being taken on the application.

(7) Where—

- (a) a notification has been given under paragraph (2), and
- (b) the applicant does not submit an environmental statement which complies with regulation 17(6),

(20) Section 77 was amended by the 1991 Act, section 32, Schedule 7, paragraph 18; the Infrastructure Act 2015 (c. 7), section 30(1) and Schedule 4, Part 2, paragraphs 2 and 11(a); and by S.I. 2014/2773 (W. 280), article 3 and Schedule 1, paragraphs 1 and 2. There are other amendments which are not relevant to this instrument.

the Welsh Ministers must determine the relevant application only by refusing planning permission or subsequent consent.

### **Appeal to the Welsh Ministers without an environmental statement**

**12.**—(1) Where, on consideration of an appeal under section 78 of the 1990 Act (right to appeal against planning decisions and failure to take such decisions) it appears to the Welsh Ministers that—

- (a) the relevant application is an EIA application; and
- (b) the development in question—
  - (i) has not been the subject of a screening opinion or screening direction; or
  - (ii) in the case of a subsequent application, was the subject of a screening opinion or direction before planning permission was granted to the effect that it is not EIA development; and
- (c) the relevant application is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations,

paragraphs (3) and (4) of regulation 6 apply as if the appeal were a request made by the appellant pursuant to regulation 5(7).

(2) Where an inspector is dealing with an appeal and a question arises as to whether the relevant application is an EIA application and it appears to the inspector that it may be such an application, the inspector must refer that question to the Welsh Ministers and must not determine the appeal before a screening direction is made, except by refusing planning permission or subsequent consent.

(3) Paragraphs (3) and (4) of regulation 6 apply to a question referred under paragraph (2) as if the referral of that question were a request made by the appellant pursuant to regulation 5(7).

(4) Where it appears to the Welsh Ministers that the relevant application is an EIA application and is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations, they must notify the appellant that the submission of an environmental statement is required and must send a copy of that notification to the relevant planning authority.

(5) Where the Welsh Ministers are aware that any particular person is or is likely to be affected by, or has an interest in, the application, who is unlikely to become aware of it by means of electronic publication, a site notice or by local advertisement, they must notify the appellant of any such person.

(6) An appellant who receives a notification under paragraph (4), may within 21 days beginning with the date of the notification, confirm to the Welsh Ministers that an environmental statement will be provided.

(7) If the appellant does not write in accordance with paragraph (6), the Welsh Ministers have or, where relevant, the inspector has, no duty to deal with the appeal; and at the end of the 21 days the Welsh Ministers, or the inspector, must inform the appellant that no further action is being taken on the appeal.

- (8) Where—
  - (a) a notification has been given under paragraph (4), and
  - (b) the appellant does not submit an environmental statement and comply with regulation 17(6),

the Welsh Ministers or, where relevant, the inspector must determine the appeal only by refusing planning permission or subsequent consent.

## PART 4

### Preparation of Environmental Statements

#### Scoping opinions

13.—(1) A person who is minded to make an EIA application may ask the relevant planning authority to provide a scoping opinion.

(2) A request under paragraph (1) must include—

(a) in relation to an application for planning permission—

(i) a plan sufficient to identify the land;

(ii) a brief description of the nature and purpose of the development and of its possible effects on the environment; and

(iii) such other information or representations as the person making the request may wish to provide or make;

(b) in relation to a subsequent application—

(i) a plan sufficient to identify the land;

(ii) sufficient information to enable the relevant planning authority to identify any planning permission granted for the development in respect of which a subsequent application has been made;

(iii) a description of the possible effects on the environment which were not identified at the time planning permission was granted; and

(iv) such other information or representations as the person making the request may wish to provide or make.

(3) An authority receiving a request under paragraph (1) must, if they consider that they have not been provided with sufficient information to adopt a scoping opinion, notify the person who made the request of the points on which they require additional information.

(4) An authority must not adopt a scoping opinion in response to a request under paragraph (1) until they have consulted the person who made the request and the consultees, but must, subject to paragraph (5), within 5 weeks beginning with the date of receipt of that request or such longer period as may be agreed in writing with the person who made the request, adopt a scoping opinion and send a copy to the person who made the request.

(5) Where a person has, at the same time as making a request for a screening opinion under regulation 5(1), asked the authority for an opinion under paragraph (1) above, and the authority have adopted a screening opinion to the effect that the development is EIA development, the authority must, within 5 weeks beginning with the date on which that screening opinion was adopted or such longer period as may be agreed in writing with the person who made the request, adopt a scoping opinion and send a copy to the person who made the request.

(6) Before adopting a scoping opinion the authority must take into account—

(a) the specific characteristics of the particular development;

(b) the specific characteristics of development of the type concerned; and

(c) the environmental features likely to be affected by the development.

(7) Where an authority fail to adopt a scoping opinion within the relevant period mentioned in paragraph (4) or (5), the person who requested the opinion may ask the Welsh Ministers under regulation 14(1) to make a scoping direction.

(8) Paragraph (7) applies even if the authority has not received additional information which they have sought under paragraph (3).

(9) Nothing prevents an authority which have adopted a scoping opinion from requiring the person who made the request to provide additional information.

(10) “Additional information” (“*gwybodaeth ychwanegol*”) in paragraph (9) means information in connection with any statement that may be submitted by that person as an environmental statement for the purposes of these Regulations in connection with an application for planning permission or a subsequent application for the same development.

### **Scoping directions**

14.—(1) A request made under this paragraph pursuant to regulation 13(7) must include—

- (a) a copy of the request to the relevant planning authority under regulation 13(1);
- (b) a copy of any relevant notification under regulation 13(3) and of any response;
- (c) a copy of any relevant screening opinion received by the person making the request and of the accompanying statement of reasons; and
- (d) any representations that the person making the request wishes to make.

(2) A person making a request must send to the relevant planning authority a copy of that request, but that copy need not include the matters mentioned in paragraph (1)(a) to (c).

(3) If the Welsh Ministers consider that the information provided pursuant to paragraph (1) is insufficient to make a scoping direction, the Welsh Ministers must give notice to the person making the request.

(4) The notice must set out any points on which additional information is required.

(5) The Welsh Ministers may also request the relevant planning authority to provide such information as they can on any of those points.

(6) The Welsh Ministers must—

- (a) consult the person making the request and the consultees before making a scoping direction in response to a request under paragraph (1), and
- (b) make a direction and send a copy to the person making the request and to the relevant planning authority, within 5 weeks beginning with the date of receipt of that request or such longer period as may be reasonably required.

(7) Before making a scoping direction the Welsh Ministers must take into account the matters specified in regulation 13(6).

(8) Nothing prevents the Welsh Ministers, (after they have made a scoping direction) nor the relevant planning authority from requiring the person making the request to provide additional information.

(9) “Additional information” (“*gwybodaeth ychwanegol*”) in paragraph (8) means information in connection with any statement that may be submitted by that person as an environmental statement for the purposes of these Regulations in connection with an application for planning permission or a subsequent application for the same development.

### **Procedure to facilitate preparation of environmental statements**

15.—(1) Any person who intends to submit an environmental statement to the relevant planning authority or the Welsh Ministers under these Regulations may give notice to that authority or the Welsh Ministers under this paragraph.

(2) A notice under paragraph (1) must include the information necessary to identify the land and the nature and purpose of the development, and must indicate the main environmental consequences to which the person giving the notice proposes to refer in the environmental statement.

- (3) The recipient of—
- (a) such notice as is mentioned in paragraph (1); or
  - (b) a statement or confirmation made pursuant to regulation 10(4)(a), 11(5) or 12(6) must—
    - (i) notify the consultees of the name and address of the person who intends to submit an environmental statement and of the duty imposed on the consultees by paragraph (4) to make information available to that person; and
    - (ii) inform the person who intends to submit an environmental statement of the names and addresses of the consultees so notified.
- (4) Subject to paragraph (5), the relevant planning authority and any consultee notified in accordance with paragraph (3) must, if requested by the person who intends to submit an environmental statement, enter into consultation with that person to determine whether the authority or consultee has in its possession any information which that person considers, or they consider, relevant to the preparation of the environmental statement. If they have, the authority or consultee must make that information available to that person.
- (5) A relevant planning authority or consultee which receives a request for information under paragraph (4) must treat it as a request for information under regulation 5(1) of the Environmental Information Regulations 2004(21).

## PART 5

### Publicity and Procedures on Submission of Environmental Statements

#### **Procedure where an environmental statement is submitted to a local planning authority**

**16.—**(1) An applicant who makes an EIA application to the relevant planning authority must also submit a statement, intended to be an environmental statement and must provide the authority with one additional copy of the statement for transmission to the Welsh Ministers.

(2) If at the same time as it makes an EIA application the applicant serves a copy of the statement on any other body, the applicant must—

- (a) serve with it a copy of the application and any plan submitted with the application (unless these have already been provided to the body in question);
  - (b) inform the body that representations may be made to the relevant planning authority; and
  - (c) inform the authority of the name of every body so served and of the date of service.
- (3) When a relevant planning authority receive an environmental statement, the authority must—
- (a) send to the Welsh Ministers, within 14 days of receipt of the statement, one copy of the statement, a copy of the relevant application and of any documents submitted with the application;
  - (b) inform the applicant of the number of copies required to enable the authority to comply with sub-paragraph (c);
  - (c) forward to any consultee which has not received a copy direct from the applicant, a copy of the statement and inform any such consultee that they may make representations;
  - (d) where the relevant planning authority are aware of any particular person who is or is likely to be affected by, or has an interest in, the application, who is unlikely to become aware of it by means of electronic publication, a site notice or by local advertisement, send a notice

to such person containing the details set out in regulation 17(2)(b) to (j) and the name and address of the relevant planning authority.

(4) The applicant must send the copies required for the purposes of paragraph (3)(c) to the relevant planning authority.

(5) Where an applicant submits an environmental statement to the authority in accordance with paragraph (1), the provisions of article 12 of and Schedule 3 to the 2012 Order (publicity for applications for planning permission) apply to a subsequent application as they apply to a planning application falling within article 12(2) of the 2012 Order as if the reference in the notice in Schedule 3 to the 2012 Order to “planning permission to” read “consent, agreement or approval to”.

(6) The relevant planning authority must not determine the application until the expiry of 21 days from the last date on which a copy of the statement was served in accordance with this regulation.

### **Publicity where an environmental statement is submitted after the planning application**

17.—(1) Where an application for planning permission or a subsequent application has been made without an environmental statement and the applicant proposes to submit such a statement, the applicant must, before submitting it, comply with paragraphs (2) to (5).

(2) The applicant must publish in a local newspaper circulating in the locality in which the land is situated a notice stating—

- (a) the applicant’s name, that an application is being made for planning permission or subsequent consent and the name and address of the relevant planning authority;
- (b) the date on which the application was made and, if it be the case, that it has been referred to the Welsh Ministers for determination or is the subject of an appeal to the Welsh Ministers;
- (c) the address or location and the nature of the proposed development;
- (d) that—
  - (i) a copy of the application, any accompanying plan and other documents, and a copy of the environmental statement, and
  - (ii) in the case of a subsequent application, a copy of the planning permission in respect of which that application has been made and supporting documents,may be inspected by members of the public at all reasonable hours;
- (e) an address in the locality in which the land is situated at which those documents may be inspected, and the latest date on which they are available for inspection (being a date not less than 21 days later than the date on which the notice is published);
- (f) an address (whether or not the same as that given under sub-paragraph (e)) in the locality in which the land is situated at which copies of the statement may be obtained;
- (g) that copies may be obtained there so long as stocks last;
- (h) if a charge is to be made for a copy, the amount of the charge;
- (i) that any person wishing to make representations about the application should make them, before the date stated in accordance with sub-paragraph (e), to the relevant planning authority or (in the case of an application referred to the Welsh Ministers or an appeal) to the Welsh Ministers; and
- (j) in the case of an application referred to the Welsh Ministers or an appeal, the address, including an electronic address, to which representations should be sent.

(3) An applicant who is notified under regulation 10(2), 11(4) or 12(5) of such a person as mentioned in any of those paragraphs must serve a notice on every such person; and the notice must contain the information specified in paragraph (2), except that the date stated as the latest date on

which the documents are available for inspection must not be less than 21 days later than the date on which the notice is first served.

(4) The applicant must, where it has the right to, or can reasonably acquire the right to, post on the land a notice containing the information specified in paragraph (2), except that the date stated as the latest date on which the documents will be available for inspection must be not less than 21 days later than the date on which the notice is first posted.

(5) The notice mentioned in paragraph (4) must—

- (a) be left in position for not less than 7 days in the 28 days immediately preceding the date of the submission of the statement; and
- (b) be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land.

(6) The statement, when submitted, must be accompanied by—

- (a) a copy of the notice mentioned in paragraph (2) certified by or on behalf of the applicant as having been published in a named newspaper on a date specified in the certificate; and
- (b) a certificate by or on behalf of the applicant which states either—
  - (i) that a notice was posted on the land in compliance with this regulation and when this was done, and that the notice was left in position for not less than 7 days in the 28 days immediately preceding the date of the submission of the statement, or that, without any fault or intention on the applicant's part, it was removed, obscured or defaced before 7 days had elapsed and the applicant took reasonable steps for its protection or replacement, specifying the steps taken; or
  - (ii) that the applicant was unable to comply with paragraphs (4) and (5) because the applicant did not have the necessary rights to do so; that any reasonable steps available to acquire those rights have been taken but unsuccessfully, specifying the steps taken.

(7) Where an applicant indicates that the applicant proposes to provide a statement in the circumstances mentioned in paragraph (1), the relevant planning authority, the Welsh Ministers or the inspector, as the case may be, must (unless disposed to refuse the permission or subsequent consent sought) suspend consideration of the application or appeal until receipt of the statement and the other documents mentioned in paragraph (6); and must not determine the application or appeal during the period of 21 days beginning with the date of receipt of the statement and the other documents so mentioned.

(8) If any person—

- (a) issues a certificate which purports to comply with the requirements of paragraph (6)(b), or
- (b) recklessly issues a certificate which purports to comply with those requirements

and which contains a statement which that person knows to be false or misleading in a material particular, that person is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) Where it is proposed to submit an environmental statement in connection with an appeal, this regulation applies as if references to the applicant were references to the appellants.

### **Provision of copies of environmental statements and further information for the Welsh Ministers on referral or appeal**

**18.** Where an applicant for planning permission or subsequent consent has submitted an environmental statement, or further information, to the relevant planning authority in connection with that application and—



- (a) the application is referred to the Welsh Ministers under section 77 of the 1990 Act (reference of applications to Secretary of State); or
- (b) the applicant appeals under section 78 of the 1990 Act (right to appeal against planning decisions and failure to take such decisions),

the applicant must supply the Welsh Ministers with one copy of the statement and, where relevant, the further information unless, in the case of a referred application, the relevant planning authority have already done so.

### **Procedure where an environmental statement is submitted to the Welsh Ministers**

**19.**—(1) This regulation applies where an applicant or appellant submits an environmental statement to the Welsh Ministers, in relation to an EIA application which is—

- (a) before the Welsh Ministers or an inspector for determination; or
- (b) the subject of an appeal to the Welsh Ministers.

(2) The applicant or appellant must submit two copies of the statement to the Welsh Ministers who must send one copy to the relevant planning authority.

(3) An applicant or appellant who submits an environmental statement to the Welsh Ministers may provide a copy of it to any other body, and if so must—

- (a) comply with regulation 16(2)(a) and (b) as if the reference in regulation 16(2)(b) to the relevant planning authority were a reference to the Welsh Ministers; and
- (b) inform the Welsh Ministers of the matters mentioned in regulation 16(2)(c).

(4) The Welsh Ministers must comply with regulation 16(3) (except sub-paragraph (a) of that regulation) and the applicant or appellant must comply with regulation 16(4) as if—

- (a) references in those provisions to the relevant planning authority were references to the Welsh Ministers; and,
- (b) in the case of an appeal, references to the applicant were references to the appellant,

and the Welsh Ministers or the inspector must comply with regulation 16(6) as if it referred to the Welsh Ministers or the inspector instead of the relevant planning authority.

### **Availability of copies of environmental statements**

**20.** An applicant or appellant, who submits an environmental statement in connection with an application or appeal, must ensure that a reasonable number of copies of the statement are available at the address named in the notices published or posted pursuant to article 12 of the 2012 Order or regulation 17(2)(f) as the address at which such copies may be obtained.

### **Charges for copies of environmental statements**

**21.** A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of a statement made available in accordance with regulation 20.

### **Further information and evidence in respect of environmental statements**

**22.**—(1) If a relevant planning authority, the Welsh Ministers or inspector dealing with an application or appeal in relation to which the applicant or appellant has submitted an environmental statement, are of the opinion that the statement should contain additional information in order to be an environmental statement, the relevant planning authority, the Welsh Ministers or inspector must notify the applicant or appellant accordingly and the applicant or appellant must provide that

additional information; and such additional information is referred to in these Regulations as “further information” (“*gwybodaeth bellach*”).

(2) Paragraphs (3) to (9) apply in relation to further information and any other information except in so far as—

- (a) the further information and any other information is provided for the purposes of an inquiry or hearing held under the 1990 Act; and
- (b) the request for the further information made pursuant to paragraph (1) stated that it was to be provided for such purposes.

(3) The recipient of further information or any other information must publish in a local newspaper circulating in the locality in which the land is situated a notice stating—

- (a) the name of the applicant for planning permission or subsequent consent, or the appellant (as the case may be), and the name and address of the relevant planning authority;
- (b) the date on which the application was made and, if it is the case, that it has been referred to the Welsh Ministers for determination or is the subject of an appeal to the Welsh Ministers;
- (c) in the case of a subsequent application, sufficient information to enable the planning permission for the development to be identified;
- (d) the address or location and the nature of the proposed development;
- (e) that further information or any other information is available in relation to an environmental statement which has already been provided;
- (f) that a copy of the further information or any other information and of any environmental statement which relates to any planning permission or subsequent application may be inspected by members of the public at all reasonable hours;
- (g) an address in the locality in which the land is situated at which the further information or any other information may be inspected and the latest date on which it will be available for inspection (being a date not less than 21 days later than the date on which the notice is published);
- (h) an address in the locality in which the land is situated (whether or not the same as that given pursuant to sub-paragraph (g)) at which copies of the further information or any other information may be obtained;
- (i) that copies may be obtained there so long as stocks last;
- (j) if a charge is to be made for a copy, the amount of the charge;
- (k) that any person wishing to make representations about the further information or any other information should make them, before the date stated in accordance with sub-paragraph (g), to the relevant planning authority, the Welsh Ministers or the inspector (as the case may be); and
- (l) the address to which representations should be sent.

(4) The recipient of the further information or any other information must send a copy of it to each person to whom, in accordance with these Regulations, the statement to which it relates was sent.

(5) Where the recipient of the further information or any other information is the relevant planning authority they must send to the Welsh Ministers one copy of the further information.

(6) The recipient of the further information may by notice require the applicant or appellant to provide such number of copies of the further information or any other information as is specified in the notice (being the number required for the purposes of paragraph (4) or (5)).

(7) Where information is requested under paragraph (1) or any other information is provided, the relevant planning authority, the Welsh Ministers or the inspector, as the case may be,—

- (a) must suspend determination of the application or appeal; and

- (b) must not determine it before—
  - (i) the expiry of 21 days after the date on which the further information or any other information was sent to all persons to whom the statement to which it relates was sent, or
  - (ii) the expiry of 21 days after the date that notice of it was published in a local newspaper,whichever is the later.

(8) The applicant or appellant who provides further information or any other information, in accordance with paragraph (1) must ensure that a reasonable number of copies of the information are available at the address named in the notice published pursuant to paragraph (3)(h) as the address at which such copies may be obtained.

(9) A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of the further information or any other information, made available in accordance with paragraph (8).

(10) The relevant planning authority or the Welsh Ministers or an inspector may require an applicant or appellant to produce such evidence as they may reasonably call for to verify any information in the environmental statement.

## PART 6

### Availability of Directions etc. and Notification of Decisions

#### **Availability of opinions, directions etc. for inspection**

**23.**—(1) Where particulars of a planning application or a subsequent application are placed on Part 1 of the register, the relevant planning authority must take steps to secure that there is also placed on that Part a copy of any—

- (a) screening opinion;
  - (b) screening direction;
  - (c) scoping opinion;
  - (d) scoping direction;
  - (e) notification given under regulation 10(1), 11(2) or 12(4);
  - (f) direction under regulation 4(4);
  - (g) environmental statement, including any further information and any other information;
  - (h) statement of reasons accompanying any of the above.
- (2) Where the relevant planning authority—
- (a) adopt a screening opinion or scoping opinion; or
  - (b) receive a request under regulation 13(1) or 14(1), a copy of a screening direction, scoping direction, or direction under regulation 4(4) before an application is made for planning permission or subsequent consent for the development in question,

the authority must take steps to secure that a copy of the opinion, request, or direction and any accompanying statement of reasons are made available for public inspection at all reasonable hours at the place where the appropriate register (or relevant section of that register) is kept.

(3) Copies of the documents referred to in paragraph (2) must remain so available for a period of two years from the date on which they are placed on the register.

**Duties to inform the public and the Welsh Ministers of final decisions**

**24.**—(1) Where an EIA application is determined by a local planning authority, the authority must—

- (a) inform the Welsh Ministers of the decision;
- (b) inform the public of the decision, by local advertisement, or by such other means as are reasonable in the circumstances; and
- (c) make available for public inspection at the place where the appropriate register (or relevant section of that register) is kept, a statement containing—
  - (i) the content of the decision and any conditions attached to it;
  - (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;
  - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and
  - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.

(2) Where an EIA application is determined by the Welsh Ministers or an inspector, the Welsh Ministers must—

- (a) notify the relevant planning authority of the decision; and
- (b) provide the authority with such a statement as is mentioned in paragraph (1)(c).

(3) The relevant planning authority must, as soon as reasonably practicable after receipt of a notification under paragraph (2)(a), comply with sub-paragraphs (b) and (c) of paragraph (1) in relation to the decision so notified as if it were a decision of the authority.

**PART 7****Development By a Local Planning Authority****Modifications where application by a local planning authority**

**25.** Where the relevant planning authority is also (or would be) the applicant (whether alone or jointly with any other person), these Regulations apply to an EIA application (or proposed application) subject to the following modifications—

- (a) subject to regulation 26(1) and (2), regulations 5 and 6 do not apply;
- (b) regulation 7 applies as if the reference to regulation 5(4) and (5) were omitted;
- (c) regulation 10 does not apply;
- (d) regulations 13 and 14 do not apply;
- (e) paragraphs (1) to (3) of regulation 15 do not apply, and regulation 15(4) applies to any consultee from whom the relevant planning authority requests assistance as it applies to a consultee notified in accordance with regulation 15(3);
- (f) except for the purposes of regulation 19(3) and (4), regulation 16 applies as if—
  - (i) paragraph (1) read—
    - “(1) When a relevant planning authority making an EIA application lodge a statement, referred to as an “environmental statement”, they must—
    - (a) provide to each consultee a copy of—

- (i) that statement;
  - (ii) the relevant application and any plan submitted with it; and
  - (iii) in the case of a subsequent application, the planning permission granted for the development in respect of which the subsequent application has been made and any documents or information relating to the application;
- (b) inform each consultee that representations may be made to the relevant planning authority; and
- (c) send to the Welsh Ministers within 14 days of lodging the statement—
- (i) one copy of the statement;
  - (ii) a copy of the relevant application and of any documents submitted with the application; and
  - (iii) in the case of a subsequent application, the planning permission granted for the development in respect of which the subsequent application has been made and any documents or information relating to the application.”; and
- (ii) paragraphs (2) and (3) were omitted;
- (iii) in regulation 16(5), the words “Where an applicant submits an environmental statement to the authority in accordance with paragraph (1),”, were omitted; and
- (iv) in regulation 16(6) “served” read “lodged”;
- (g) regulation 19 applies as if paragraph (2) were omitted.

### Screening opinions and directions

**26.**—(1) An authority which is minded to make a planning application or a subsequent application in relation to which the authority would be the relevant planning authority, may adopt a screening opinion or request the Welsh Ministers to make a screening direction, and paragraphs (3) and (4) of regulation 6 apply to such a request as they apply to a request made pursuant to regulation 5(7).

(2) A relevant planning authority who propose to carry out development which they consider may be—

- (a) development of a description specified in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995(22) other than development of a description specified in article 3(12) of that Order; or
- (b) development for which permission would be granted but for regulation 37 (new simplified planning zone schemes or enterprise zone orders),

may adopt a screening opinion or request the Welsh Ministers to make a screening direction.

(3) Paragraphs (3) and (4) of regulation 6 apply to such a request as they apply to a request made pursuant to regulation 5(7).

(4) A request under paragraph (1) or (2) must be accompanied by—

- (a) in the case of a planning application, the documents described in regulation 5(2);
- (b) in the case of a subsequent application, the documents described in regulation 5(3).

(5) An authority making a request under paragraph (1) or (2) must send to the Welsh Ministers any additional information which is requested to enable the Welsh Ministers to make a direction.

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(22) S.I. 1995/418, to which there are amendments not relevant to these Regulations.

## PART 8

### Applications for planning permission made to the Welsh Ministers

#### Application of Parts 2 to 7

27.—(1) This Part applies where an application for planning permission is made to the Welsh Ministers and so that “application” (“*cais*”) in this Part means an application for planning permission so made.

(2) Parts 2 to 7 apply, subject to the exceptions in the following paragraph and the modifications and supplementary provisions in this Part.

(3) Regulations 5, 6(1), 6(2), 7 to 14(1), 16, 17(9), 18, 20, 24, 25 and 26 do not apply.

#### Requests for screening directions of the Welsh Ministers

28.—(1) A person who is minded to make an application may request the Welsh Ministers to adopt a screening direction.

(2) A request for a screening direction in relation to an application must be accompanied by—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the development and of its possible effects on the environment;
- (c) a statement that the request is made in relation to a development of national significance for the purposes of section 62D of the 1990 Act; and
- (d) such other information or representations as the person making the request may wish to provide or make.

(3) A person making a request pursuant to paragraph (1) must send to the relevant planning authority a copy of that request and the documents which accompany that request.

(4) Paragraphs (3) to (7) of regulation 6 apply as if the references to making a request under regulation 5(7) were references to making a request under regulation 28(1).

#### Applications made without an environmental statement

29.—(1) Where an application is made and it appears to the Welsh Ministers that—

- (a) it is an EIA application; and
- (b) it is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

the Welsh Ministers must notify the applicant that the submission of an environmental statement is required and send a copy of that notification to the relevant planning authority.

(2) The Welsh Ministers must notify the applicant in accordance with paragraph (1) within 28 days, beginning with the date on which the Welsh Ministers are in receipt of an application, or such longer period as the Welsh Ministers may determine.

(3) An applicant who receives a notification under paragraph (1) may, within 21 days beginning with the date of the notification, confirm to the Welsh Ministers that an environmental statement will be provided.

(4) Where the Welsh Ministers are aware that any particular person is or is likely to be affected by, or has an interest in, the application, who is unlikely to become aware of it by means of electronic publication, a site notice or by local advertisement, the Welsh Ministers must notify the applicant of any such person.

(5) If the applicant does not confirm in accordance with paragraph (4), the Welsh Ministers are under no duty to deal with the application and, at the end of the 21 day period, they must inform the applicant that no further action is being taken on the application.

(6) Where—

(a) a notification has been given under paragraph (1); and

(b) the applicant does not submit an environmental statement and comply with regulation 17 (publicity where an environmental statement is submitted after the planning application),

the Welsh Ministers must determine the application only by refusing planning permission.

### **Scoping directions**

**30.**—(1) A person who is minded to make an application for planning permission may ask the Welsh Ministers to provide scoping directions.

(2) A request under paragraph (1) must include—

(a) a plan sufficient to identify the land;

(b) a brief description of the nature and purpose of the development and of its possible effects on the environment;

(c) a statement that the request is made in relation to a development of national significance for the purposes of section 62D of the 1990 Act; and

(d) such other information or representations as the person making the request may wish to provide or make.

(3) A person making a request pursuant to paragraph (1) must send to the relevant planning authority a copy of that request and the documents which accompany that request.

(4) If the Welsh Ministers consider that the information provided pursuant to paragraph (1) is insufficient to make a scoping direction, the Welsh Ministers must give notice to the person making the request.

(5) The notice must set out any points on which additional information is required.

(6) The Welsh Ministers may also request the relevant planning authority to provide such information as they can on any of those points.

(7) The Welsh Ministers must—

(a) consult the person making the request and the consultees before making a scoping direction in response to a request under paragraph (1), and

(b) make a direction and send a copy to the person who made the request and to the relevant planning authority, within 5 weeks beginning with the date of receipt of that request or such longer period as may be reasonably required.

(8) Before making a scoping direction the Welsh Ministers must take into account the matters specified in regulation 13(6).

(9) Nothing prevents the Welsh Ministers, (after they have made a scoping direction) or the relevant planning authority from requiring the person who made the request to provide additional information.

(10) “Additional information” (“*gwybodaeth ychwanegol*”) in paragraph (9) means information in connection with any statement that may be submitted by that person as an environmental statement for the purposes of these Regulations.

### **Procedure to facilitate preparation of environmental statements**

**31.** Regulation 15 applies as if—

- (a) paragraph (3) reads—
- “(3) The recipient of—
- (a) such notice as is mentioned in paragraph (1); or
- (b) a statement made pursuant to regulation 10(4)(a), 11(5), 12(6) or 29(3)
- must—
- (i) notify the consultees of the name and address of the person who intends to submit an environmental statement and of the duty imposed on the consultees by paragraph (4) to make information available to that person; and
- (ii) inform the person who intends to submit an environmental statement of the names and addresses of the consultees so notified.”; and
- (b) the references in paragraphs (4) and (5) to the “relevant planning authority” and “authority” were to the Welsh Ministers.

#### **Procedure where an environmental statement is submitted to the Welsh Ministers**

32. Regulation 19 applies as if paragraph (2) reads “The applicant must submit one copy of the environmental statement to the Welsh Ministers and one copy to the relevant planning authority.”

#### **Publicity where an environmental statement is submitted after the planning application**

33. Regulation 17 applies as if paragraphs (2) and (3) read—

“(2) The applicant must publish in a local newspaper circulating in the locality in which the land is situated a notice stating—

- (a) the applicant’s name, that an application is being made to the Welsh Ministers for planning permission and the address of the Welsh Ministers;
- (b) the date on which the application was made;
- (c) the address or location and the nature of the proposed development;
- (d) that a copy of the application, any accompanying plan and other documents, and a copy of the environmental statement may be inspected by members of the public at all reasonable hours;
- (e) an address in the locality in which the land is situated at which those documents may be inspected, and the latest date on which they are available for inspection (being a date not less than 21 days later than the date on which the notice is published);
- (f) an address (whether or not the same as that given under sub-paragraph (e)) in the locality in which the land is situated at which copies of the statement may be obtained;
- (g) that copies may be obtained there so long as stocks last;
- (h) if a charge is to be made for a copy, the amount of the charge;
- (i) that any person wishing to make representations about the application must make them, before the date named in accordance with sub-paragraph (e), to the Welsh Ministers; and
- (j) the address to which representations should be sent.

(3) An applicant who is notified under regulation 29(4) (applications without environmental statement) of such a person as mentioned in any of those paragraphs must serve a notice on every such person; and the notice must contain the information specified



in paragraph (2), except that the date noted as the latest date on which the documents will be available for inspection must not be less than 21 days later than the date on which the notice is first served.”

#### **Availability of copies of environmental statements**

**34.** An applicant who submits an environmental statement in connection with an application, must ensure that a reasonable number of copies of the statement are available at the address named in the notices published or served pursuant to article 18(2) of the 2016 Order as the address at which such copies may be obtained.

#### **Availability of directions etc. for inspection**

**35.** Regulation 23 applies as if paragraph (1)(e) reads “notification given under regulation 29(2) (applications made without environmental statement);”.

#### **Duties to inform the public of final decisions**

**36.—**(1) Where an EIA application is determined by the Welsh Ministers or an inspector, the Welsh Ministers must—

- (a) notify the relevant planning authority of the decision; and
- (b) provide the authority with a statement containing—
  - (i) the content of the decision and any conditions attached to it;
  - (ii) the main reasons and considerations on which the decision is based, including, if relevant, information about the participation of the public;
  - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and
  - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.

(2) The relevant planning authority must, as soon as reasonably practicable after receipt of a notification under paragraph (1)(a)—

- (a) inform the public of the decision, by local advertisement, or by such other means as are reasonable in the circumstances; and
- (b) make the statement the authority received pursuant to paragraph (1)(b), available for public inspection at the place where the appropriate register (or relevant section of that register) is kept.

## **PART 9**

### **Restrictions of Grants of Permission**

#### **New simplified planning zone schemes or enterprise zone orders**

**37.** With effect from the commencement date—

- (a) the adoption or approval of a simplified planning zone scheme(23);
- (b) an order designating an enterprise zone made under section 88 of the 1990 Act; or

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(23) See the definition of “simplified planning zone” in section 336 of the 1990 Act.

(c) the approval of a modified scheme in relation to such an enterprise zone,  
may not:

- (i) grant planning permission for EIA development; or
- (ii) grant planning permission for Schedule 2 development unless that grant is made subject to the prior adoption of a screening opinion or prior making of a screening direction that the particular proposed development is not EIA development.

### **Local development orders**

**38.**—(1) This regulation applies in relation to Schedule 2 development for which a local planning authority propose to grant planning permission by local development order.

(2) Where this regulation applies, the local planning authority must not adopt or revise a local development order unless they have adopted a screening opinion or the Welsh Ministers have made a screening direction.

(3) Paragraph (4) and Schedule 5 apply where—

- (a) the local planning authority adopts a screening opinion; or
- (b) the Welsh Ministers make a screening direction under these Regulations,

to the effect that the development is EIA development.

(4) The local planning authority must not adopt or revise a local development order which would grant planning permission for EIA development unless—

- (a) an environmental statement has been prepared in relation to that development; and
- (b) the authority has taken the environmental information into consideration, and they state in their decision that they have done so.

### **Section 97 orders and section 102 orders**

**39.**—(1) This regulation applies where a local planning authority or the Welsh Ministers propose to make or confirm a section 97 order or a section 102 order.

(2) In this regulation—

“section 97 order” (*“gorchymyn adran 97”*) means—

- (a) an order of a local planning authority under section 97(1) of the 1990 Act, or
- (b) an order of the Welsh Ministers under section 100(1) of the 1990 Act,
- (c) modifying any permission to develop land; and

“section 102 order” (*“gorchymyn adran 102”*) means an order of a local planning authority under section 102 of the 1990 Act or an order of the Welsh Ministers to like effect pursuant to section 104(1) of the 1990 Act.

(3) The local planning authority must not make and the Welsh Ministers must not make or confirm, a section 97 order or a section 102 order in relation to Schedule 2 development unless the local planning authority have adopted a screening opinion or the Welsh Ministers have made a screening direction.

(4) Paragraphs (5) and (6) and Schedule 6 apply—

- (a) to Schedule 1 development;
- (b) where either—
  - (i) the local planning authority adopts a screening opinion, or
  - (ii) the Welsh Ministers make a screening direction under these Regulations,

to the effect that the development is EIA development.

(5) The local planning authority must not make a section 97 order which permits or requires EIA development unless—

- (a) they have prepared an environmental statement in relation to that development; and
- (b) they have taken the environmental information into consideration and they state in their decision that they have done so.

(6) The Welsh Ministers must not confirm or make a section 97 order or a section 102 order which permits or requires EIA development unless—

- (a) an environmental statement has been prepared in relation to that development; and
- (b) they have taken the environmental information into consideration and they state in their decision that they have done so.

## PART 10

### Unauthorised Development

#### Interpretation

**40.** In this Part—

“unauthorised EIA development” (*“datblygiad AEA anawdurdodedig”*) means EIA development which is the subject of an enforcement notice under section 172 of the 1990 Act (issue of enforcement notice)(**24**); and

“ground (a) appeal” (*“apêl sail (a)”*) means an appeal brought under section 174(2)(a) of the 1990 Act.

#### Prohibition on the grant of planning permission for unauthorised EIA development

**41.** The Welsh Ministers or an inspector must not grant planning permission or subsequent consent under section 177(1) of the 1990 Act (grant or modification of planning permission on appeals against enforcement notices)(**25**) in respect of unauthorised EIA development unless the Welsh Ministers or inspector has first taken the environmental information into consideration, and they must state in the decision that they have done so.

#### Screening opinions

**42.—**(1) Where it appears to the local planning authority by whom or on whose behalf an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include Schedule 1 development or Schedule 2 development they must, before the enforcement notice is issued, adopt a screening opinion.

(2) Where it appears to the local planning authority by whom or on whose behalf an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include EIA development they must serve with a copy of the enforcement notice a notice (“regulation **42** notice”) which must—

- (a) include the screening opinion required by paragraph (1) and the statement required by regulation **4(7)**; and

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(24) Section 172 was substituted by section 5 of the 1991 Act.

(25) Section 177 was amended by sections 6(3) and 32 of, and paragraph 24 of Schedule 7 to, the 1991 Act; section 123(1), (6) of the Localism Act 2011 (c. 20). There is another amendment which is not relevant to this instrument.

- (b) require a person who gives notice of an appeal under section 174 of the 1990 Act<sup>(26)</sup> to submit to the Welsh Ministers with the notice two copies of an environmental statement relating to that EIA development.
- (3) The authority by whom a regulation 42 notice has been served must send a copy of it to—
  - (a) the Welsh Ministers;
  - (b) the consultees; and
  - (c) any particular person of whom the authority is aware, who is likely to be affected by, or has an interest in, the regulation 42 notice.
- (4) Where an authority provide the Welsh Ministers with a copy of a regulation 42 notice they must include with it a list of the other persons to whom a copy of the notice has been or is to be sent.

### Screening directions

43.—(1) Any person on whom a regulation 42 notice is served may, within 21 days beginning with the date the notice is served, apply to the Welsh Ministers for a screening direction.

- (2) An application for a screening direction must be accompanied by—
  - (a) a copy of the regulation 42 notice;
  - (b) a copy of the enforcement notice which accompanied it; and
  - (c) such other information or representations as the applicant may wish to provide or make.
- (3) At the same time as applying to the Welsh Ministers, the applicant must send to the authority by whom the regulation 42 notice was served, a copy of the application and of any information or representations provided or made in accordance with paragraph (2)(c).
- (4) If the Welsh Ministers consider that the information provided in accordance with paragraph (2)(a) is insufficient to make a direction, they must notify the applicant and the authority of the matters in respect of which additional information is required; and the information so requested must be provided by the applicant within such reasonable period as may be specified in the notice.
- (5) The Welsh Ministers must send a copy of the direction to the applicant.
- (6) Where the Welsh Ministers direct that the matters which are alleged to constitute the breach of planning control do not comprise or include EIA development, they must send a copy of the direction to every person to whom a copy of the regulation 42 notice was sent.

### Provision of information

44.—(1) The relevant planning authority and any person, other than the Welsh Ministers, to whom a copy of the regulation 42 notice has been sent (“the regulation 42 consultee”) must, if requested by the person on whom the regulation 42 notice was served, enter into consultation with that person to determine whether the regulation 42 consultee has in their possession any information which that person or the regulation 42 consultee considers relevant to the preparation of an environmental statement and if they have, the regulation 42 consultee must make any such information available to that person.

(2) Regulation 15(5) applies to information under paragraph (1) as it applies to any information falling within regulation 15(4).

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<sup>(26)</sup> Section 174 was amended by section 6(1) of, and paragraph 22 of Schedule 7 to, the 1991 Act; the Planning (Wales) Act 2015, section 46; and by S.I.2003/956. See also section 177(5) which was amended by paragraph 24 of Schedule 7 to the 1991 Act.

### **Appeal to the Welsh Ministers without a screening opinion or screening direction**

**45.**—(1) Where on consideration of an appeal under section 174 of the 1990 Act it appears to the Welsh Ministers that the matters alleged to constitute the breach of planning control comprise or include Schedule 1 development or Schedule 2 development, they must, before any notice is served pursuant to regulation 46, make a screening direction.

(2) Where an inspector is dealing with an appeal under section 174 of the 1990 Act and a question arises as to whether the matters alleged to constitute the breach of planning control comprise or include Schedule 1 development or Schedule 2 development, the inspector must refer that question to the Welsh Ministers.

(3) Before receiving a screening direction the inspector may not determine the application which is deemed to have been made by virtue of the appeal under section 174 of the 1990 Act (“the deemed application”) except to refuse that application.

(4) Where a question is referred under paragraph (2), the Welsh Ministers must make a screening direction within 21 days beginning with the date on which the question was referred or such longer period as may be reasonably required.

(5) The Welsh Ministers must send a copy of any screening direction made pursuant to paragraph (4) to the inspector.

(6) If the Welsh Ministers consider that sufficient information to make a screening direction has not been provided, they must give notice to the applicant and the authority by whom the regulation 42 notice was served, of the matters in respect of which additional information is required and the information so requested must be provided by the applicant within such reasonable period as may be specified in the notice.

(7) If an appellant to whom notice has been given under paragraph (6) fails to comply with the requirements of that notice—

- (a) the application which is deemed to have been made by virtue of the appeal made under section 174 of the 1990 Act; and
- (b) the appeal in so far as it is a ground (a) appeal,

lapse at the end of the period specified in the notice.

### **Appeal to the Welsh Ministers without an environmental statement**

**46.**—(1) The procedure in paragraph (2) applies where—

- (a) the Welsh Ministers or an inspector are considering an appeal under section 174 of the 1990 Act;
- (b) the matters which are alleged to constitute the breach of planning control comprise or include unauthorised EIA development; and
- (c) the documents submitted for the purposes of the appeal do not include a statement referred to by the appellant as an environmental statement for the purposes of these Regulations.

(2) The procedure is—

- (a) the Welsh Ministers must, within the period of 21 days beginning with the day on which the appeal is received, or such longer period as may be reasonably required, notify the appellant of the requirements of sub-paragraph (c) below; but this is subject to sub-paragraph (b);
- (b) notice need not be given under sub-paragraph (a) where the appellant has submitted an environmental statement to the Welsh Ministers for the purposes of an appeal under section 78 of the 1990 Act (right to appeal against planning decisions and failure to take such decisions) which—

- (i) relates to the development to which the appeal under section 174 of the 1990 Act relates; and
- (ii) is to be determined at the same time as the appeal under section 174 of the 1990 Act; and that statement, any further information, any other information and the representations (if any) made in relation to it must be treated as the environmental information for the purpose of regulation 41;
- (c) the appellant must, within the period specified in the notice or such longer period as the Welsh Ministers may allow, submit to the Welsh Ministers two copies of an environmental statement relating to the unauthorised EIA development in question;
- (d) the Welsh Ministers must send to the relevant planning authority a copy of any notice sent to the appellant under sub-paragraph (a);
- (e) if an appellant to whom notice has been given under sub-paragraph (a) fails to comply with the requirements of sub-paragraph (c), the deemed application and any ground (a) appeal lapse at the end of the period specified or allowed (as the case may be);
- (f) as soon as reasonably practicable after the occurrence of the lapse described in subparagraph (e), the Welsh Ministers must notify the appellant and the local planning authority that the deemed application and any ground (a) appeal have lapsed.

#### **Procedure where an environmental statement is submitted to the Welsh Ministers**

**47.** Where the Welsh Ministers receive (otherwise than as mentioned in regulation 46(2)(b)) an environmental statement in connection with an enforcement appeal, they must—

- (a) send a copy of that statement to the relevant planning authority, advise the authority that the statement will be taken into consideration in determining the deemed application and the ground (a) appeal (if any), and inform them that they may make representations;
- (b) notify the persons to whom a copy of the relevant regulation 42 notice was sent that the statement will be taken into consideration in determining the deemed application and the ground (a) appeal (if any), and inform them that they may make representations and that, if they wish to receive a copy of the statement or any part of it, they must notify the Welsh Ministers of their requirements within 7 days of the receipt of the Welsh Ministers' notice; and
- (c) respond to requirements notified in accordance with paragraph (b) by providing a copy of the statement or of the part requested (as the case may be).

#### **Further information and evidence respecting environmental statements**

**48.** Regulation 22(1) and (10) apply to statements provided in accordance with this Part with the following modifications—

- (a) where the Welsh Ministers or an inspector notify the appellant under regulation 22(1), the appellant must provide the further information within such period as the Welsh Ministers or the inspector may specify in the notice or such longer period as the Welsh Ministers or the inspector may allow;
- (b) if an appellant to whom a notice has been given under paragraph (a) fails to provide the further information within the period specified or allowed, the deemed application and the ground (a) appeal (if any) lapse at the end of that period.

### **Publicity for environmental statements or further information**

**49.**—(1) Where an authority receive a copy of a statement or further information by virtue of regulation 47(a) or any other information they must publish by local advertisement a notice stating—

- (a) the name of the appellant and that the enforcement notice has been appealed to the Welsh Ministers;
- (b) the address or location of the land to which the notice relates and the nature of the development;
- (c) sufficient information to enable any planning permission for the development to be identified;
- (d) that a copy of the statement, further information or any other information and of any planning permission may be inspected by members of the public at all reasonable hours;
- (e) an address in the locality in which the land is situated at which the statement or further information or any other information may be inspected, and the latest date on which it will be available for inspection (being a date not less than 21 days later than the date on which the notice is published);
- (f) that any person wishing to make representations about any matter dealt with in the statement or further information or any other information should make them, no later than 21 days after the date stated in accordance with sub-paragraph (e), to the Welsh Ministers; and
- (g) the address to which any such representations should be sent.

(2) The authority must, as soon as practicable after publication of a notice in accordance with paragraph (1), send to the Welsh Ministers a copy of the notice certified by or on behalf of the authority as having been published by local advertisement on a date specified in the certificate.

(3) Neither the Welsh Ministers receiving a certificate under paragraph (2) nor an inspector may determine the deemed application or the ground (a) appeal in respect of the development to which the certificate relates until the expiry of 21 days from the date stated in the published notice as the last date on which the statement or further information was available for inspection.

### **Public inspection of documents**

**50.**—(1) The relevant planning authority must make available for public inspection at all reasonable hours at the place where the appropriate register (or relevant part of that register) is kept, a copy of—

- (a) every regulation 42 notice given by the authority;
- (b) every notice received by the authority under regulation 46(2)(d); and
- (c) every statement and all further information received by the authority under regulation 47(a);

and copies of those documents must remain so available for a period of 2 years or until they are entered in Part 2 of the register in accordance with paragraph (2), whichever is the sooner.

(2) Where particulars of any planning permission granted by the Welsh Ministers or an inspector under section 177 of the 1990 Act are entered in Part 2 of the register<sup>(27)</sup>, the relevant planning authority must take steps to secure that that Part also contains a copy of any of the documents referred to in paragraph (1) as are relevant to the development for which planning permission has been granted.

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(27) See section 177(8) of the 1990 Act.

(3) The provisions of regulation 24(2) and (3) apply to a deemed application and a grant of planning permission under section 177 of the 1990 Act as they apply to an application for and grant of planning permission under Part 3 of the 1990 Act.

### Significant transboundary effects

51. Regulation 53 applies to unauthorised EIA development as if—

(a) regulation 53(1)(a) read—

“(a) on consideration of an appeal under section 174 of the 1990 Act the Welsh Ministers are of the opinion that the matters which are alleged to constitute the breach of planning control comprise or include EIA development and that the development has or is likely to have significant effects on the environment in another EEA State; or”;

(b) in regulation 53(3)(a), “a copy of the application concerned” read “a description of the development concerned”;

(c) in regulation 53(6), “application” read “appeal”.

## PART 11

### ROMP Applications

#### General application of the Regulations to ROMP applications

52.—(1) In this regulation and in Schedule 7—

“relevant mineral planning authority” (“*awdurdod cynllunio mwynau perthnasol*”) means the body to whom it falls, fell, or would, but for a direction under—

- (a) paragraph 7 of Schedule 2 to the 1991 Act;
- (b) paragraph 13 of Schedule 13 to the 1995 Act; or
- (c) paragraph 8 of Schedule 14 to the 1995 Act,

fall to determine the ROMP application in question;

“ROMP” (“*ROMP*”) means review of old mineral permission;

“ROMP application” (“*cais ROMP*”) means an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under—

- (a) paragraph 2(2) of Schedule 2 to the 1991 Act (registration of old mining permissions);
- (b) paragraph 9(1) of Schedule 13 to the 1995 Act (review of old mineral planning permissions); or
- (c) paragraph 6(1) of Schedule 14 to the 1995 Act (periodic review of mineral planning permissions)(28);

“ROMP development” (“*datblygiad ROMP*”) means development which has yet to be carried out and which is authorised by a planning permission in respect of which a ROMP application has been or is to be made;

“ROMP subsequent application” (“*cais dilynol ROMP*”) means an application for approval of a matter where the approval—

(28) Paragraph 6 was amended by S.I. 2004/3156 (W. 273). There is another amendment which is not relevant to these Regulations.



- (a) is required by or under a condition to which a planning permission is subject following determination of a ROMP application; and
- (b) must be obtained before all or part of the minerals development permitted by the planning permission may be begun or continued;

“ROMP subsequent consent” (“*caniatâd dilynol ROMP*”) means consent granted pursuant to a ROMP subsequent application.

(2) Subject to paragraph (2) and to the modifications and additions set out in Schedule 7, these Regulations apply to—

- (a) a ROMP application as they apply to an application for planning permission;
- (b) a ROMP subsequent application as they apply to a subsequent application;
- (c) ROMP development as they apply to development in respect of which an application for planning permission is, has been, or is to be made;
- (d) a relevant mineral planning authority as they apply to a relevant planning authority;
- (e) a person making a ROMP application as they apply to an applicant for planning permission;
- (f) a person making a ROMP subsequent application as they apply to a person making a subsequent application;
- (g) the determination of a ROMP application as they apply to the granting of a planning permission; and
- (h) the granting of ROMP subsequent consent as they apply to the granting of subsequent consent.

(3) These Regulations do not apply to—

- (a) any undetermined ROMP application to which the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009(29) apply;
- (b) to any appeal in relation to such an application.

## PART 12

### Development with Significant Transboundary Effects

#### Development in Wales likely to have significant effects in another EEA State

53.—(1) Where—

- (a) it comes to the attention of the Welsh Ministers that development proposed to be carried out in Wales is the subject of an EIA application and is likely to have significant effects on the environment in another EEA State; or
- (b) another EEA State likely to be significantly affected by such development so requests,

the Welsh Ministers must—

- (i) send to the EEA State as soon as possible and no later than their date of publication in The London Gazette referred to in paragraph (ii) below, the particulars mentioned in paragraph (2) and, if relevant, the information referred to in paragraph (3);

- (ii) publish the information in paragraph (i) above in a notice placed in The London Gazette indicating the address where additional information is available; and
  - (iii) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.
- (2) The particulars referred to in paragraph (1)(b)(i) are—
- (a) a description of the development, together with any available information on its possible significant effect on the environment in another Member State; and
  - (b) information on the nature of the decision which may be taken.
- (3) Where an EEA State indicates, in accordance with paragraph (1)(b)(iii), that it wishes to participate in the procedure for which these Regulations provide, the Welsh Ministers must as soon as possible send to that EEA State—
- (a) a copy of the application concerned;
  - (b) a copy of any planning permission relating to the development;
  - (c) a copy of any environmental statement in respect of the development; and
  - (d) relevant information regarding the procedure under these Regulations,
- but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (1)(b)(i).
- (4) The Welsh Ministers must also—
- (a) arrange for the particulars and information referred to in paragraphs (2) and (3) and any further information and any other information to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public concerned in the territory of the EEA State likely to be significantly affected; and
  - (b) ensure that those authorities and the public concerned are given an opportunity, before planning permission for the development is granted, to forward to the Welsh Ministers, within a reasonable time, their opinion on the information supplied.
- (5) The Welsh Ministers must in accordance with Article 7(4) of the Directive—
- (a) enter into consultations with the EEA State concerned regarding, inter alia, the potential significant effects of the development on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
  - (b) determine in agreement with the other EEA State a reasonable period of time for the duration of the consultation period.
- (6) Where an EEA State has been consulted in accordance with paragraph (5), on the determination of the application concerned the Welsh Ministers must inform the EEA State of the decision and must forward to it a statement of—
- (a) the content of the decision and any conditions attached to it;
  - (b) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public; and
  - (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

#### **Projects in another EEA State likely to have significant transboundary effects**

**54.**—(1) Where the Welsh Ministers receive from another EEA State, pursuant to Article 7(1) or 7(2) of the Directive, information which that EEA State has gathered from the developer of a proposed project in that EEA State, which is likely to have significant effects on the environment in Wales, they must, in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with that EEA State regarding the potential significant effects of the proposed project on the environment in Wales and the measures envisaged to reduce or eliminate such effects; and
  - (b) determine in agreement with that EEA State a reasonable period, before development consent for the project is granted, during which members of the public in Wales may submit to the competent authority in that EEA State representations pursuant to Article 7(3)(b) of the Directive.
- (2) The Welsh Ministers must also—
- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable time, both to the authorities in Wales which are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in Wales;
  - (b) ensure that those authorities and the public concerned are given an opportunity, before development consent for the project is granted, to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information supplied; and
  - (c) so far as such information has been received by the Welsh Ministers, notify those authorities and the public of the content of any decision of the competent authority of the relevant EEA State; and in particular—
    - (i) any conditions attached to it;
    - (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and
    - (iii) a description of the main measures to avoid, reduce and, if possible, offset any major adverse effects that have been identified.

## PART 13

### Miscellaneous

#### **Application to the High Court**

**55.** For the purposes of Part 12 of the 1990 Act (validity of certain decisions), the reference in section 288(1)(b)(**30**) to action of the Welsh Ministers not being within the powers of the 1990 Act is to be taken to extend to a grant of planning permission or subsequent consent not being permitted by reason of regulations 3 or 41.

#### **Hazardous waste and material change of use**

**56.** A change in the use of land or buildings to a use for a purpose mentioned in paragraph 9 of Schedule 1 involves a material change in the use of that land or those buildings for the purposes of section 55(1) of the 1990 Act (meaning of “development” and “new development”).

#### **Extension of the period for an authority’s decision on a planning application**

**57.—(1)** For the purposes of section 78 of the 1990 Act (right to appeal against planning decisions and failure to take such decisions), in determining the time which has elapsed without the relevant planning authority giving notice to the applicant of their decision, where—

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(30) Section 288(1)(b) was amended by the [Planning \(Wales\) Act 2015 \(anaw 4\)](#), section 27 and Schedule 4, paragraph 16.

- (a) the authority have notified an applicant in accordance with regulation 10(1) that the submission of an environmental statement is required; and
- (b) the Welsh Ministers have given a screening direction in relation to the development in question,
- (c) no account is to be taken of any period before the issue of the direction.

(2) Where it falls to an authority to determine an EIA application, articles 22 (time periods for decision) and 23 (applications made under planning condition) of the 2012 Order have effect as if each of the references in article 22(2)(a) and 23 to a period of 8 weeks were a reference to a period of 16 weeks.

### **Extension of the power to provide in a development order for the giving of directions as respects the manner in which planning applications are dealt with**

**58.** Provisions included in a development order by virtue of section 60 of the 1990 Act (permission granted by development order)(**31**) which enable the Welsh Ministers to give directions, must enable them to direct that development which is both of a description mentioned in Column 1 of the table in Schedule 2, and of a class described in the direction is EIA development for the purposes of these Regulations.

### **Application to the Crown**

**59.**—(1) These Regulations apply to the Crown with the following modifications.

(2) In relation to an application made to the Welsh Ministers other than an application under section 62D of the 1990 Act (developments of national significance: applications for planning permission), regulation 11 (application referred to the Welsh Ministers without an environmental statement) is to be read as if—

- (a) in paragraph (1)—
  - (i) before “referred” in the first place it occurs, it read “made to the Welsh Ministers under section 293A of the 1990 Act (urgent Crown development: application)(**32**) or”; and
  - (ii) before “referral” it read “making or the”; and
- (b) in paragraph (2), before “referred” in the first place it occurs, it read “made under section 293A of the 1990 Act or”.

### **Revocation of statutory instruments and transitional provisions**

**60.**—(1) The statutory instruments in Schedule 8 are revoked, to the extent shown in that Schedule.

(2) Nothing in paragraph (1) affects the continued application of the instruments revoked by that paragraph, and these Regulations do not apply, in relation to—

- (a) any application lodged or received by an authority before the commencement date,
- (b) any undetermined ROMP application to which those instruments apply in accordance with the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009,

(31) There are amendments to section 60 which are not relevant to these Regulations.

(32) Section 293A was inserted by section 82(1) of the Planning and Compulsory Purchase Act 2004 (c.5) (the “2004 Act”) and has been amended by section 16 and Schedule 2, paragraphs 8 and 9 and section 27 and paras 1 and 17(1) to (3) of Schedule 4 to the Planning (Wales) Act 2015 (anaw. 4). Section 118(3) of the 2004 Act provides that a reference in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) to an enactment amended by the 2004 Act must be taken as a reference to the enactment as so amended.

(c) any appeal in relation to an application under sub-paragraph (a) or (b), or

(d) any matter in relation to which a local planning authority have, before that date, issued an enforcement notice under section 172 of the 1990 Act.

(3) In this regulation, “ROMP” (“*ROMP*”) and “ROMP application” (“*cais ROMP*”) have the same meaning as in regulation 52(1).

### **Consequential amendments**

**61.** The instruments in Schedule 9 are amended to the extent shown in that Schedule.

27 January 2016

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