
WELSH STATUTORY INSTRUMENTS

2017 No. 565

The Environmental Impact Assessment
(Agriculture) (Wales) Regulations 2017

PART 3

Consent

Requirement for consent

8. The consent of the Welsh Ministers must be obtained before a person commences or carries out a significant project.

Scoping opinions

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

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

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

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

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

Provision of information

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

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

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

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

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

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

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

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

The consent application and environmental statement

11.—(1) An application for consent must—

- (a) include an environmental statement; and
- (b) be made to the Welsh Ministers.

(2) An environmental statement is a statement which includes at least—

- (a) a description of the project comprising information on the site, design, size and other relevant features of the project;
- (b) a description of the likely significant effects of the project on the environment;
- (c) a description of features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the significant effects of the project on the environment;
- (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
- (f) any additional information specified in Schedule 3 relevant to the specific characteristics of the particular project or type of project and to the environmental features likely to be significantly affected.

(3) The environmental statement must—

- (a) be prepared on behalf of the applicant by persons who, in the opinion of the Welsh Ministers, have sufficient expertise to ensure the completeness and quality of the statement;
- (b) contain a statement by or on behalf of the applicant or appellant describing the expertise of the person who prepared the environmental statement;
- (c) where a scoping opinion has been issued in accordance with regulation 9, be based on the most recent scoping opinion issued (so far as the project remains materially the same as the project which was the subject of that opinion);
- (d) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment; and
- (e) take into account the available results of other relevant environmental assessments required under EU legislation or any other provision of domestic legislation, with a view to avoiding duplication of assessment.

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

(1) [S.I. 2004/3391](#).

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

Additional information

12.—(1) If, after complying with regulation 11(4), the Welsh Ministers decide that a statement included with an application for consent, which purports to be an environmental statement, should contain additional information in order to be an environmental statement, the Welsh Ministers must notify the applicant of the additional information required and the applicant must provide the Welsh Ministers with that information within 28 days of being so notified (“additional environmental information”).

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

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

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

(2) If the Welsh Ministers consider that a project is likely to have significant effects in accordance with paragraph (1), or an EEA State likely to be significantly affected requests, the Welsh Ministers must send to that EEA State—

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

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

- (a) a copy of the application for consent, the environmental statement and any further information they consider relevant to the application; and
- (b) information on the procedure under these Regulations.

(4) In accordance with Article 6 of the EIA Directive, the Welsh Ministers must—

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

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

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

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

14.—(1) If the Welsh Ministers receive information from another EEA State made available in accordance with Article 7(1) of the EIA Directive in relation to a significant project in that EEA State, prior to a decision on consent being made, the Welsh Ministers must—

- (a) make that information available, within a reasonable time, to the consultation bodies and members of the public which are likely to be concerned by the project;
- (b) provide the consultation bodies and members of the public referred to in sub-paragraph (a) with the opportunity to submit their opinion on the information provided within the period agreed under paragraph (2)(b).

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

- (a) enter into a consultation, together with the EEA State concerned, regarding the potential significant effects of the project on the environment in Wales and the measures envisaged to reduce or eliminate those effects; and
 - (b) seek to agree with the EEA State a reasonable period, before a consent decision is made, during which opinions under paragraph (1)(b) can be forwarded to that EEA State.
- (3) If another EEA State has taken a decision to grant or refuse consent and has informed the Welsh Ministers of that decision, the Welsh Ministers must bring the information received from the EEA State in relation to that decision to the attention of the public.

The consent decision

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

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

whichever is the last to occur.

Additional requirements relating to the Habitats Regulations

16.—(1) The Welsh Ministers must not grant consent for a project which would be unlawful under regulations 41, 43 or 45 of the Habitats Regulations.

(2) But that does not include anything for which a licence has been granted under regulation 53 of the Habitats Regulations.

(3) Paragraphs (4) to (7) apply when the Welsh Ministers are deciding whether to grant consent for a project which is likely to have a significant effect on a European site, whether alone or in combination with another project (referred to in those paragraphs as “the project”).

(4) The Welsh Ministers may only grant consent for a project if they have considered the implications of the project for the European site (including an appropriate assessment of the implications in the view of that site’s conservation objectives) and are satisfied that the project will not adversely affect the integrity of the site, unless paragraph (5) applies.

(5) If the Welsh Ministers are satisfied that the project must be carried out for imperative reasons of overriding public interest (which may be of a social or economic nature, subject to paragraph (6)) and that there is no alternative solution, they may grant consent for the project even though the assessment of its implications for a European site is negative.

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

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

(7) If the Welsh Ministers decide to grant consent for a project in accordance with paragraph (5), they must secure any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000(2) is protected.

Conditions of consent

17.—(1) Consent granted in accordance with regulation 15 will be subject to—

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

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

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

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

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

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

(6) In this regulation, a project has been—

“commenced” (“*dechrau*”) when a material act has been carried out in respect of any of the works permitted by the consent; and

“completed” (“*wedi ei gwblhau*”) when all works permitted by the consent have been carried out and all changes in use, or the level of use, of the relevant land have been implemented.

Procedure following a consent decision

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

- (a) notify the applicant, any consultation body to whom copies of the consent application were sent under regulation 11(4)(a), any EEA State notified under regulation 13(2) and any authority or person who submitted an opinion under regulation 13(4)(b), of—
 - (i) their decision;
 - (ii) the reasons for the decision;
 - (iii) any representations made by the public;

(2) See regulation 3(1) of the Habitats Regulations for the definition of “Natura 2000”.

- (b) publish a notice in a newspaper in the locality where the relevant land is situated or by any other means they consider reasonable in the circumstances; and
- (c) make a statement available for public inspection that contains—
 - (i) the decision;
 - (ii) the reasons for the decision;
 - (iii) a description of the principal measures that must be taken to avoid, reduce or offset any major adverse effects of the project;
 - (iv) a summary of any representations made by the public; and
 - (v) information regarding the right to challenge the decision and procedures for doing so.

Transborder projects

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

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

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

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

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

Review of decisions and consents

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

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

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