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WELSH STATUTORY INSTRUMENTS

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**2017 No. 567 (W. 136)**

**TOWN AND COUNTRY PLANNING, WALES**

**The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017**

<i>Made</i>	- - - -	<i>20 April 2017</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>24 April 2017</i>
<i>Coming into force</i>	- -	<i>16 May 2017</i>

The Welsh Ministers being designated for the purposes of section 2(2) of the European Communities Act 1972(1) in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, insofar as it concerns town and country planning(2), in exercise of the powers conferred by that section, section 71A of the Town and Country Planning Act 1990(3), and having taken into account the selection criteria in Annex III to Directive 2011/92/EU(4) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment(5), make the following Regulations.

**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 2017.

(2) These Regulations come into force on 16 May 2017.

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- (1) 1972 c. 68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
- (2) S.I. 2007/1679. See article 4.
- (3) 1990 c. 8. Section 71A was inserted by section 15 of the 1991 Act. The functions of the Secretary of State under that Act were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672): see the entry in Schedule 1 for the 1991 Act. Those functions were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), the functions being relevant Assembly functions as defined in paragraph 30(2).
- (4) Directive 2011/92/EU has been amended by Directive 2014/52/EU. See Articles 2(1) and 3(1) of Directive 2014/52/EU.
- (5) O.J. No. L 26, 28.1.2012, p. 1. The Directive has been amended by Directive 2014/52/EU of the European Parliament and of the Council O.J. No. L 124, 25.4.2014, p. 1. See in particular Article 3(1).

(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 7.

## 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<sup>(6)</sup>;

“the 1995 Act” (“*Deddf 1995*”) means the Environment Act 1995<sup>(7)</sup>;

“the 2012 Order” (“*Gorchymyn 2012*”) means the Town and Country Planning (Development Management Procedure) (Wales) Order 2012<sup>(8)</sup>;

“the 2016 Order” (“*Gorchymyn 2016*”) means the Developments of National Significance (Procedure) (Wales) Order 2016<sup>(9)</sup>;

“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 leol*”), in relation to a notice, means—

- (a) by publication of the notice in a newspaper circulating in the locality in which the land is situated; and
- (b) by publication of the notice on the website of the relevant planning authority;

“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, or would be required to consult if an application for planning permission were before them, by virtue of article 22 of the 2016 Order (time periods for decision) 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>(10)</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;

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<sup>(6)</sup> 1991 c. 34.

<sup>(7)</sup> 1995 c. 25.

<sup>(8)</sup> S.I. 2012/801 (W. 110); amended by S.I. 2015/1330 (W. 123); there are other amending instruments but none is relevant.

<sup>(9)</sup> S.I. 2016/55 (W. 25).

<sup>(10)</sup> See S.I. 2012/1903 (W. 230).

“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<sup>(11)</sup>;

“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 impact assessment” (“*asesiad o’r effaith amgylcheddol*”) means the process described in regulation 4(1);

“environmental statement” (“*datganiad amgylcheddol*”) means a statement as described in regulation 17;

“exempt development” (“*datblygiad esempt*”) means development in respect of which the Welsh Ministers have made a direction under regulation 5(4);

“European site” (“*safle Ewropeaidd*”) means a site within the meaning of regulation 8(3) of the Conservation of Habitats and Species Regulations 2010<sup>(12)</sup>;

“further information” (“*gwybodaeth bellach*”) has the meaning given in regulation 24(1);

“initiating body” (“*corff cychwyn*”) means the local planning authority or the Welsh Ministers, as appropriate, where they propose to make the section 97 order or the section 102 order;

“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<sup>(13)</sup>;

“monitoring measure” (“*mesur monitro*”) means provision requiring the monitoring of any significant adverse effects on the environment of proposed development including any measures contained in—

- (a) a condition imposed on the grant of planning permission; or
- (b) a planning obligation;

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(11) O.J. No. L 26, 28.1.2012, p. 1-21. Council Directive 2011/92/EU has been amended by Council Directive 2014/52/EU, O.J. No. L 124, 25.4.2014, p. 1–18.

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

(13) 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).

“principal council” (“*prif gyngor*”) has the meaning given by section 270(1) (general provisions as to interpretation) of the Local Government Act 1972(14);

“register” (“*cofrestr*”) means a register kept pursuant to section 69 of the 1990 Act (registers of applications etc.)(15) 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(16); or
- (b) a direction under section 77 of the 1990 Act (reference of applications to Secretary of State)(17);

“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*”) has the meaning given to it by regulation 14(7);

“scoping opinion” (“*barn gwmpasu*”) has the meaning given to it by regulation 14(1);

“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;

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

- (a) an order of a local planning authority under section 97(1) of the 1990 Act (power to revoke or modify planning permission); or
- (b) an order of the Welsh Ministers under section 100(1) of the 1990 Act (revocation and modification of planning permission);

“section 102 order” (“*gorchymyn adran 102*”) means—

- (a) an order of a local planning authority under section 102 of the 1990 Act; or
- (b) an order of the Welsh Ministers to like effect pursuant to section 104(1) of the 1990 Act (orders requiring discontinuance of use or alteration or removal of buildings or works);

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

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(14) 1972 c. 70. “Principal council” means a council elected for a county borough.

(15) 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.

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

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

- (a) land notified under section 28(1) (sites of special scientific interest) of the Wildlife and Countryside Act 1981(18);
- (b) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949(19);
- (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(20);
- (d) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(21);
- (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(22);
- (f) a European site;

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

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

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

“Union legislation” (“*deddfwriaeth yr Undeb*”) means any enactment which applies in relation to Wales giving effect to an EU obligation.

(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 person may, or is required to, state, notify, request, confirm, inform or make representations, that person 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)(23).

### **Prohibition on granting planning permission or subsequent consent without environmental impact assessment**

**3.** A relevant planning authority or the Welsh Ministers or an inspector must not grant planning permission or subsequent consent for EIA development unless an environmental impact assessment has been carried out in respect of that development.

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(18) 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).

(19) 1949 c. 97, see section 5(3). See section 27AA for the application of section 28 in relation to land in Wales.

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

(21) 1979 c. 46. See the definition in section 1(11).

(22) 2000 c. 37. Section 82(2) was amended by S.I. 2013/755.

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

## Environmental impact assessment

- 4.—(1) The environmental impact assessment is a process consisting of—
- (a) the preparation of an environmental statement by the person seeking or initiating planning permission;
  - (b) any consultation, publication and notification required by Parts 5, 9 and where relevant, Part 12 of these Regulations, the 2012 Order or the 2016 Order in respect of EIA development; and
  - (c) the steps required under regulation 25(1).
- (2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of proposed development on the following—
- (a) population and human health;
  - (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC(24) and Directive 2009/147/EC(25);
  - (c) land, soil, water, air and climate;
  - (d) material assets, cultural heritage and the landscape; and
  - (e) the interaction between the factors listed in sub-paragraphs (a) to (d).
- (3) The effects referred to in paragraph (2) on the factors set out in that paragraph must include—
- (a) the operational effects of the proposed development, where the proposed development will have operational effects; and
  - (b) the expected effects deriving from the vulnerability of the proposed development to risks of major accidents and disasters that are relevant to that development.
- (4) The relevant planning authority or the Welsh Ministers, as the case may be, must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement.

## PART 2

### Screening

#### General provisions relating to screening

- 5.—(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.

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(24) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and on the conservation of wild fauna and flora O.J. L 206, 22.7.1992, pp. 7–50.

(25) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds O.J. L 20, 26.1.2010, pp. 7–25.

(4) The Welsh Ministers may direct that these Regulations do not apply in relation to a particular proposed development specified in the direction—

- (a) in accordance with Article 2(4) of the Directive (without prejudice to Article 7 of the Directive) where in the opinion of the Welsh Ministers the application of these Regulations would adversely affect the purpose of the development;
- (b) if the development comprises or forms part of a project having the response to civil emergencies as its sole purpose and in the opinion of the Welsh Ministers compliance with these Regulations would adversely affect those purposes.

(5) Where a direction is given under paragraph (4)(a) or (4)(b) the Welsh Ministers must send a copy of any such direction to the relevant planning authority.

(6) Where a direction is given under paragraph (4)(a) the Welsh Ministers must—

- (a) make available to the public the information considered in making the direction and the reasons for making the direction;
- (b) consider whether another form of assessment would be appropriate; and
- (c) take such steps they consider appropriate to bring the information obtained under the other form of assessment to the attention of the public.

(7) In cases where development is adopted<sup>(26)</sup> under an Act of the National Assembly for Wales or a measure made under powers contained in such an Act, the Welsh Ministers may (without prejudice to Article 7 of the Directive) exempt that development from the provisions relating to public consultation in the Directive provided the objectives of the Directive are met.

(8) 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—

- (a) any information provided by the person minded to carry out development;
- (b) the available results of other environmental assessments carried out pursuant to Union legislation other than legislation implementing the requirements of the Directive; and
- (c) such of the selection criteria set out in Schedule 3 as are relevant to the development.

(9) Where a local planning authority adopt a screening opinion, or the Welsh Ministers make a screening direction—

- (a) that opinion or direction must state the main reasons for the conclusion of the authority or the Welsh Ministers, as appropriate, with reference to the relevant criteria listed in Schedule 3;
- (b) if it is determined that proposed development is not EIA development, that opinion or direction must state any features of the proposed development and measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(10) The authority or the Welsh Ministers, as appropriate, must send a copy of the opinion or direction to the person who proposes to carry out, or who has carried out, the development in question.

(11) The Welsh Ministers may make a screening direction either—

- (a) of their own volition; or
- (b) if requested to do so by any person.

(12) 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 neither of sub-

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<sup>(26)</sup> See Article 2(5) of the Directive.

paragraphs (a) and (b) of the definition of “Schedule 2 development” is satisfied in relation to that development.

(13) If the Welsh Ministers make a screening direction in accordance with paragraph (11), they must—

- (a) take such steps as appear to be reasonable to them in the circumstances, having regard to the requirements of regulation 6(2) and (4), to obtain information about the proposed development to inform a screening direction;
- (b) take into account in making that direction—
  - (i) the information gathered in accordance with sub-paragraph (a);
  - (ii) the available results of other environmental assessments carried out pursuant to Union legislation other than legislation implementing the requirements of the Directive; and
  - (iii) such of the selection criteria set out in Schedule 3 as are relevant to the development; and
- (c) issue a screening direction within 90 days from the date on which the Welsh Ministers have obtained sufficient information to make a direction.

(14) Where the Welsh Ministers consider that due to exceptional circumstances relating to the circumstances of the proposed development that it is not practicable for them to adopt a screening direction within the period specified in paragraph (13)(c), the Welsh Ministers may extend that period by notice given to the person who made the request for a screening direction.

(15) The Welsh Ministers must state in any notice given under paragraph (14) the reasons justifying the extension and the date when the determination is expected.

(16) The Welsh Ministers must send a copy of any screening direction to the relevant planning authority.

### **Requests for screening opinions**

6.—(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 description of the development, including in particular—
  - (i) a description of the physical characteristics of the development and, where relevant, of demolition works;
  - (ii) a description of the location of the development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
- (c) a description of the aspects of the environment likely to be significantly affected by the development;
- (d) a description of any likely significant effects, to the extent of the information available on those effects, of the proposed development on the environment resulting from—
  - (i) the expected residues and emissions and the production of waste, where relevant; and
  - (ii) the use of natural resources, in particular soil, land, water and biodiversity; and
- (e) such other information or representations as the person making the request may wish to provide or make including any features of the proposed development or any measures



envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(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) the information described in paragraph (2)(c) and (d), but only to the extent that this relates to likely significant effects on the environment which were not previously identified; and
- (d) such other information or representations as the person making the request may wish to provide or make, including any features of the proposed development or any measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(4) The person making the request for the screening opinion must, when that person provides the information required by paragraphs (2) or (3), take into account the criteria in Schedule 3 and the available results of other environmental assessments carried out pursuant to Union legislation other than under the Directive.

(5) 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.

(6) An authority must adopt a screening opinion within—

- (a) 21 days; or
- (b) such longer period not exceeding 90 days as may be agreed in writing with the person making the request,

in either case, from the date on which the person making the request submits the information required under paragraph (2) or (3).

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

(8) Where an authority—

- (a) fails to adopt a screening opinion pursuant to paragraph (6); 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.

(9) The person may make a request pursuant to paragraph (8) even if the authority have not received additional information which they have sought under paragraph (5).

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

7.—(1) A person who pursuant to regulation 6(8) 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 6(1) and the documents which accompanied it;
- (b) a copy of any notification received under regulation 6(5) 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—

(a) 21 days; or

(b) such longer period not exceeding 90 days as may be reasonably required,

in either case, from the date on which the person making the request submits the information required under paragraph (1).

(7) Where the Welsh Ministers consider that due to exceptional circumstances relating to the proposed development it is not practicable for them to adopt a screening direction within the period of 90 days, the Welsh Ministers may extend that period by giving notice in writing to the person who made the request for a screening direction.

(8) The Welsh Ministers must state in any notice under paragraph (7) the reasons justifying the extension and the date when the determination is expected.

(9) The Welsh Ministers must send a copy of any screening direction made pursuant to paragraph (6) to the person who made the request, the applicant (if they are not the person who made the request) and the relevant planning authority as soon as reasonably practicable.

## PART 3

### Procedures Concerning Applications for Planning Permission

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

8.—(1) 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 (5) and (6) of regulation 6 apply as if the receipt or lodging of the application were a request made under regulation 6(1).

(2) Where regulation 6(4) applies by virtue of this regulation, the relevant planning authority must, where and insofar as necessary to ensure that the applicant has provided the information referred to in regulation 6(2), make a request for additional information before issuing a screening opinion.

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

9.—(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 significant effects of the development on the environment, 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 significant effects of the development on the environment, they must serve a notice seeking further information in accordance with regulation 24(1).

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

- 10.**—(1) 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 (5) and (6) of regulation 6 apply as if the receipt or lodging of the application were a request made under regulation 6(1).
- (2) Where paragraph (5) of regulation 6 applies by virtue of this regulation, the relevant planning authority must, where and insofar as necessary to ensure that the applicant has provided the information referred to in regulation 6(2), make a request for additional information before issuing a screening opinion and regulation 6(4) applies as if the receipt or lodging of the application were a request made under regulation 6(1).

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

- 11.**—(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 in respect of the development—

- (a) in the case of an application for planning permission; or
- (b) pursuant to a subsequent application,

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)(27).

(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 that the development is not EIA development, an authority which has given a notification in accordance with paragraph (1) must determine the relevant application by refusing planning permission or subsequent consent if the applicant does not submit an environmental statement and comply with regulation 19(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 request to the relevant planning authority under regulation 6(1) and the documents which accompanied it;
- (b) any notification made under regulation 6(4) and any response sent by that person to the relevant planning authority;
- (c) the application;
- (d) all documents sent to the authority as part of the application;
- (e) all correspondence between the applicant and the authority relating to the proposed development;
- (f) any planning permission granted for the development; and
- (g) in the case of a subsequent application, relevant documents or information relating to the planning permission granted for the development,

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(27) 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 (anaw 4), section 45; 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 (9) of regulation 7 apply to a request under this regulation as they apply to a request made pursuant to regulation 6(8).

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

**12.**—(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)(28), and it appears to the Welsh Ministers that—

- (a) it is a Schedule 1 application or a Schedule 2 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) to (9) of regulation 7 apply as if the referral of the application were a request made by the applicant pursuant to regulation 6(8).

(2) Where regulation 7(3) applies by virtue of this regulation, the Welsh Ministers must, where necessary to ensure that the applicant has provided—

- (a) in the case of applications, the information referred to in regulation 6(2),
- (b) in the case of subsequent applications, the information required by regulation 6(3),

make a request for additional information before issuing a screening direction and regulation 6(4) applies as if the referral of the application were a request made by the applicant under regulation 6(1).

(3) Where the Welsh Ministers have determined that an application referred to them for determination is an EIA application but 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.

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

(6) An applicant who receives a notification under paragraph (3) 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 applicant does not write in accordance with paragraph (6), 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.

(8) Where—

- (a) a notification has been given under paragraph (3), and

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(28) 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.

- (b) the applicant does not submit an environmental statement which complies with regulation 19(6),

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

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

**13.**—(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 a Schedule 1 application or a Schedule 2 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) to (9) of regulation 7 apply as if the appeal were a request made by the appellant pursuant to regulation 6(8).

(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) to (9) of regulation 7 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 6(8).

(4) Where regulation 7(3) applies by virtue of paragraph (1) or (3), the Welsh Ministers must, where necessary to ensure that the applicant has provided, in the case of—

- (a) applications, the information referred to in regulation 6(2); and
- (b) subsequent applications, the information referred to in regulation 6(3),

make a request for additional information before issuing a screening direction and regulation 6(4) applies as if the referral of the application were a request made by the applicant under regulation 6(8).

(5) 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.

(6) 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.

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

(8) If the appellant does not confirm in accordance with paragraph (7), 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.

(9) Where—

- (a) a notification has been given under paragraph (5), and

(b) the appellant does not submit an environmental statement and comply with regulation 19(6),  
the Welsh Ministers or, where relevant, the inspector must determine the appeal by refusing planning permission or subsequent consent.

## PART 4

### Preparation of Environmental Statements

#### Scoping opinions

14.—(1) A person who is minded to make an EIA application may ask the relevant planning authority to state their opinion as to the scope and level of detail of the information to be provided in the environmental statement (“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 including its location and technical capacity;
- (iii) its likely significant effects on the environment; and
- (iv) 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 likely significant 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 consultees, but must, subject to paragraph (5), within 8 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 6(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 8 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) any information provided by the applicant about the proposed development;
- (b) the specific characteristics of the particular development;
- (c) the specific characteristics of development of the type concerned; and
- (d) the environmental features likely to be significantly 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 15(1) to make a direction as to the information to be provided in the environmental statement (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

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

- (a) a copy of the request to the relevant planning authority under regulation 14(1);
- (b) a copy of any relevant notification under regulation 14(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 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 14(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**

**16.**—(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 11(4)(a), 12(6) or 13(7),

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(29).

## **PART 5**

### **Publicity and Procedures on Submission of Environmental Statements**

#### **Environmental statements**

**17.**—(1) An EIA application must be accompanied by an environmental statement for the purposes of these Regulations but this is subject to paragraph (2).

(2) Where regulation 9(1) and (2) apply, paragraph (1) does not apply.

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

- (a) a description of the proposed development comprising information on the site, design, size and other relevant features of the development;
- (b) a description of the likely significant effects of the proposed development on the environment;

- (c) a description of any features of the proposed development, 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 or appellant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the significant effects of the development 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 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected.
- (4) An environmental statement must—
- (a) be prepared by persons who in the opinion of the relevant planning authority or the Welsh Ministers, as appropriate, 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 or direction has been issued in accordance with regulation 14 or 15, be based on the most recent scoping opinion or direction issued (so far as the proposed development remains materially the same as the proposed development which was the subject of that opinion or direction);
  - (d) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment; and
  - (e) take into account other relevant environmental assessments required under Union legislation or any other provision of domestic legislation, with a view to avoiding duplication of assessment.

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

**18.**—(1) An applicant who submits an environmental statement to the relevant planning authority must submit it in electronic and paper format unless otherwise agreed in writing.

(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 the statement 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 electronic 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 authority are aware of any particular person who is or is likely to be affected by, or has an interest in, the application and who is unlikely to become aware of it by means of electronic publication or site notice or by local advertisement, send a notice to such person containing the details set out in regulation 19(2)(b) to (k) and the name and address of the 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 30 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**

**19.**—(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 30 days later than the date on which the notice is published);
- (f) details of a website maintained by or on behalf of the relevant planning authority on which the environmental statement and other documents may be inspected, and the latest date on which they will be available for access (being a date not less than 30 days later than the date on which the notice is published);
- (g) 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;
- (h) that copies may be obtained there so long as stocks last;
- (i) if a charge is to be made for a copy, the amount of the charge;
- (j) that any person wishing to make representations about the application should make them, before the later of the dates stated in accordance with sub-paragraph (e) or (f), 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

- (k) 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 11(2), 12(4) or 13(6) of such a person as mentioned in any of those regulations must serve a notice on every such person; and the notice must contain the information specified in paragraph (2).

(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).

(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 environmental 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 30 days beginning with the last date on which the statement and the other documents so mentioned are published in accordance with this regulation.

(8) 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 appellent.

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

**20.—**(1) 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 the statement and, where relevant, the further information unless, in the case of a referred application, the authority have already done so.

(2) The statement and the further information supplied in accordance with paragraph (1) must be in electronic and paper format unless otherwise agreed in writing.

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

**21.**—(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 the environmental statement in electronic and paper format to the Welsh Ministers and to the relevant planning authority, unless otherwise agreed in writing.

(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 sub-paragraphs (a) and (b) of regulation 18(2) as if the reference in regulation 18(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 18(2)(c).

(4) The Welsh Ministers must comply with regulation 18(3) (except sub-paragraph (a) of that regulation) and the applicant or appellant must comply with regulation 18(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 18(6) as if it referred to the Welsh Ministers or the inspector instead of the relevant planning authority.

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

**22.** 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 19(2)(g) as the address at which such copies may be obtained.

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

**23.** 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 22.

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

**24.**—(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, in order to satisfy the requirements of regulation 17(3) it is necessary for the statement to be supplemented with additional information which is directly relevant to reaching a reasoned conclusion on the likely significant effects of the development described in the application, 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 in paper and electronic format, unless otherwise agreed in writing; 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 by local advertisement 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 30 days later than the date on which the notice is published);
- (h) details of a website maintained by or on behalf of the relevant planning authority on which the further information or any other information may be inspected, and the latest date on which they will be available for access (being a date not less than 30 days later than the date on which the notice is published);
- (i) an address in the locality in which the land is situated (whether or not the same as that given pursuant to sub-paragraphs (g) and (h)) at which copies of the further information or any other information may be obtained;
- (j) that copies may be obtained there so long as stocks last;
- (k) if a charge is to be made for a copy, the amount of the charge;
- (l) 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
- (m) 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 the expiry of 30 days after the latest of—
  - (i) 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;
  - (ii) the date that notice of it was published in a local newspaper; or
  - (iii) the date that notice of it was published on the website.

(8) The applicant or appellant who provides further information or any other information, in accordance with paragraph (1) must—

- (a) ensure that a reasonable number of copies of the information are available at the address named in the notice published pursuant to paragraph (3)(i) as the address at which such copies may be obtained; and
- (b) take any reasonable steps required by the authority to ensure that copies of the further information or other information are made available for access on the website referred to in the notice published pursuant to paragraph (3).

(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)(a).

(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.

### **Consideration of whether planning permission should be granted**

**25.—**(1) When determining an application or appeal in relation to which an environmental statement has been submitted the relevant planning authority or the Welsh Ministers, as the case may be, must—

- (a) examine the environmental information;
- (b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, their own supplementary examination;
- (c) integrate that conclusion into the decision as to whether planning permission or subsequent consent is to be granted; and
- (d) if planning permission or subsequent consent is to be granted, consider whether it is appropriate to impose monitoring measures.

(2) The reasoned conclusion referred to in paragraph (1) must be up to date when the determination is made; and that conclusion must be taken to be up to date if in the opinion of the relevant planning authority or the Welsh Ministers, as the case may be, it addresses the significant effects that are likely to arise as a result of the development proposed.

(3) When considering whether to impose a monitoring measure under paragraph (1)(d), the relevant planning authority or the Welsh Ministers, as appropriate, must—

- (a) if monitoring is considered to be appropriate, consider whether to make provision for potential remedial action;

- (b) take steps to ensure that the type of parameters to be monitored and the duration of the monitoring are proportionate to the nature, location and size of the proposed development and the significance of its effects on the environment; and
- (c) consider, in order to avoid duplication of monitoring, whether monitoring arrangements required under Union legislation (other than legislation implementing the requirements of the Directive) or other legislation applicable in Wales are more appropriate than imposing monitoring measures.

(4) In cases where no statutory timescale is in place the determination of the relevant planning authority or the Welsh Ministers, the case may be, must be made within a reasonable period of time, taking into account the nature and complexity of the proposed development, from the date on which the relevant planning authority or the Welsh Ministers have been provided with the environmental information.

## PART 6

### Coordination of assessments

**26.—**(1) Where in relation to EIA development there is, in addition to the requirement for an environmental impact assessment to be carried out, also a requirement to carry out a Habitats Regulations Assessment, the relevant planning authority (or the Welsh Ministers, as the case may be) must where appropriate ensure that the Habitats Regulations Assessment and the environmental impact assessment are co-ordinated.

(2) In this regulation, a “Habitats Regulations Assessment” (*“Asesiad Rheoliadau Cynefinoedd”*) means an assessment under regulation 61 of the Conservation of Habitats and Species Regulations 2010.

## PART 7

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

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

**27.—**(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 11(1), 12(3) or 13(5);
  - (f) direction under regulation 5(4) or (5);
  - (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 14(1) or 15(1), or a copy of a screening direction, scoping direction, or direction under regulation 5(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 part 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.

### **Information to accompany decisions**

**28.**—(1) Where an EIA application or appeal in relation to which an environmental statement has been submitted is determined by a relevant planning authority or the Welsh Ministers, as the case may be, the person making that determination must provide to the applicant or appellant the information specified in paragraph (2).

(2) The information is—

- (a) information regarding the right to challenge the validity of the decision and the procedures for doing so; and
- (b) if the decision is to grant planning permission or subsequent consent—
  - (i) the reasoned conclusion of the relevant planning authority or the Welsh Ministers, as the case may be, on the significant effects of the development on the environment, taking into account the results of the examination referred to in regulation 25(1)(a) and (b);
  - (ii) any conditions to which the decision is subject which relate to the likely significant environmental effects of the development on the environment;
  - (iii) a description of any features of the development and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment; and
  - (iv) any monitoring measures considered appropriate by the authority or the Welsh Ministers, as the case may be; or
- (c) if the decision is to refuse planning permission or subsequent consent, the main reasons for the refusal.

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

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

- (a) inform the Welsh Ministers of the decision by electronic means;
- (b) inform the consultees of the decision;
- (c) inform the public of the decision, by local advertisement, or by such other means as are reasonable in the circumstances; and
- (d) make available for public inspection at the place where the appropriate register (or relevant part of that register) is kept, a statement containing—
  - (i) details of the matters referred to in regulation 28(2);
  - (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;

- (iii) a summary of the results of the consultations undertaken and information gathered, in respect of the application and how those results, in particular how the comments received from an EEA State pursuant to consultation under regulation 56, have been incorporated or otherwise addressed.

(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) to (d) of paragraph (1) in relation to the decision so notified as if it were a decision of the authority.

## PART 8

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

#### Application of Parts 2 to 7

**30.**—(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 6, 7(1), 7(2), 8 to 15, 20, and 22 do not apply.

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

**31.**—(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 description of the development, including in particular—
    - (i) a description of the physical characteristics of the whole development and, where relevant, of demolition works;
    - (ii) a description of the location of the development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
  - (c) a description of the aspects of the environment likely to be significantly affected by the development;
  - (d) a description of any likely significant effects, to the extent of the information available on those effects, of the proposed development on the environment resulting from—
    - (i) the expected residues and emissions and the production of waste, where relevant; and
    - (ii) the use of natural resources, in particular soil, land, water and biodiversity;
  - (e) 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
  - (f) such other information or representations as the person making the request may wish to provide or make including any features of the proposed development or any measures

envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(3) The person making the request for the screening opinion must take into account the criteria in Schedule 3 and the available results of other environmental assessments carried out pursuant to Union legislation other than under the Directive when that person provides the information required by paragraph (2).

(4) 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.

(5) Paragraphs (3) to (9) of regulation 7 apply as if the references to making a request under regulation 6(8) were references to making a request under regulation 31(1).

### **Applications made without an environmental statement**

**32.**—(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 (3), 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 19 (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**

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

- (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 including its location and technical capacity;

- (c) its likely significant effects on the environment;
  - (d) 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
  - (e) 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 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 8 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—
- (a) any information provided by the applicant about the proposed development;
  - (b) the specific characteristics of the particular development;
  - (c) the specific characteristics of development of the type concerned; and
  - (d) the environmental features likely to be significantly affected by the development.
- (9) Nothing prevents the Welsh Ministers, (after they have made a scoping direction) from requiring the person who made the request to provide additional information about the likely significant effects of the proposed development.
- (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**

**34.** Regulation 16 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 11(4)(a), 12(6), 13(7) or 32(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.

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

**35.** Regulation 19 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 30 days later than the date on which the notice is published);
- (f) details of a website maintained by or on behalf of the Welsh Ministers on which the environmental statement and other documents may be inspected, and the latest date on which they will be available for access (being a date not less than 30 days later than the date on which the notice is published);
- (g) 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;
- (h) that copies may be obtained there so long as stocks last;
- (i) if a charge is to be made for a copy, the amount of the charge;
- (j) that any person wishing to make representations about the application must make them, before the date named in accordance with sub-paragraph (e) or (f), whichever is the latest, to the Welsh Ministers; and
- (k) the address to which representations should be sent.

(3) An applicant who is notified under regulation 32(4) of such a person as mentioned in that regulation, 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**

**36.** 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**

**37.** Regulation 27 applies as if paragraph (1)(e) reads “notification given under regulation 32(2) (applications made without environmental statement);”.

## PART 9

### Restrictions of Grants of Permission

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

**38.** No—

- (a) adoption or approval of a simplified planning zone scheme<sup>(30)</sup>;
- (b) an order designating an enterprise zone made under section 88 of the 1990 Act; or
- (c) the approval of a modified scheme in relation to such an enterprise zone, may—
  - (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

**39.**—(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—

- (a) the local planning authority must not adopt or revise a local development order unless they have either requested and adopted a screening opinion or the Welsh Ministers have made a screening direction;
- (b) regulation 7(1) applies as if the words “pursuant to regulation 6(8)” were omitted;
- (c) regulations 6(2) to (9), 7 and 8 apply as if references to—
  - (i) an application for planning permission, are to a proposal for a local development order;
  - (ii) a relevant planning authority, are to the local planning authority to whom it would fall to adopt or revise the local development order;
  - (iii) the applicant, are to the authority; and
  - (iv) a Schedule 2 application are to a proposal for a local development order to grant planning permission for Schedule 2 development.

(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,

to the effect that the development concerned is EIA development.

(4) The local planning authority must not adopt or revise a local development order which grants planning permission for Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location unless an environmental impact assessment has been carried out in respect of that development.

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<sup>(30)</sup> See the definition of “simplified planning zone” in section 336 of the 1990 Act.

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

**40.**—(1) This regulation applies where a local planning authority or the Welsh Ministers propose to make or confirm a section 97 order modifying any permission to develop land or a section 102 order granting planning permission.

(2) 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 authority have requested and adopted a screening opinion or the Welsh Ministers have made a screening direction.

(3) Where this regulation applies—

- (a) regulation 6(4) does not apply;
- (b) regulation 7(1) applies as if the words “pursuant to regulation 6(8)” were omitted;
- (c) regulations 6(2), (4), (5) to (9) and 7(1), (3) to (9) apply as if references to—
  - (i) an application for planning permission, are to a proposal for a section 97 or a section 102 order;
  - (ii) a relevant planning authority, are to the body to whom it falls to make the section 97 or section 102 order;
  - (iii) the applicant are to the initiating body; and
  - (iv) a Schedule 1 or a Schedule 2 application are to a proposal of a section 97 order or a section 102 order which would grant or modify planning permission for Schedule 1 development or Schedule 2 development respectively.

(4) Paragraphs (5) and (6) and Schedule 6 apply in either case—

- (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 an environmental impact assessment has been carried out in relation to that development.

(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 an environmental impact assessment has been carried out in relation to that development.

### **Action under section 141 of the 1990 Act**

**41.**—(1) This regulation and Schedule 7 apply in relation to the exercise of functions by the Welsh Ministers under section 141(2) or (3) of the 1990 Act(**31**).

(2) Where the Welsh Ministers receive a purchase notice under section 139(4) of the 1990 Act, the Welsh Ministers must not modify planning permission for EIA development or direct that, if an application for planning permission for EIA development is made, it must be granted unless an environmental impact assessment has been carried out in respect of that development.

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**(31)** Section 141 of the 1990 Act enables Welsh Ministers to take certain action in relation to planning permission instead of confirming a purchase notice submitted to them pursuant to section 140 of the 1990 Act. A purchase notice may be served on a council pursuant to section 137 of the 1990 Act.

## PART 10

### Unauthorised Development

#### Interpretation of this Part

**42.** In this Part—

“enforcement functions” (“*swyddogaethau gorfodi*”) means—

- (a) the issue of an enforcement notice under section 172 of the 1990 Act (issue of enforcement notice)(**32**);
- (b) the issue of a planning contravention notice under section 171C of the 1990 Act (power to require information about activities on land)(**33**);
- (c) the issue of a temporary stop notice under section 171E of the 1990 Act (temporary stop notice)(**34**);
- (d) the issue of a stop notice under section 183 of the 1990 Act (stop notices)(**35**);
- (e) the service of a breach of condition notice under section 187A of the 1990 Act (enforcement of conditions)(**36**); and
- (f) an application to the court for an injunction under section 187B of the 1990 Act (injunctions restraining breaches of planning control)(**37**);

“ground (a) appeal” (“*apêl sail (a)*”) means an appeal brought under section 174(2)(a) of the 1990 Act (appeal against enforcement notice)(**38**); and

“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).

#### Duty to ensure objectives of the Directive are met

**43.** Relevant planning authorities, in the exercise of their enforcement functions, must have regard to the need to secure compliance with the requirements and objectives of the Directive.

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

**44.** 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)(**39**) in respect of unauthorised EIA development unless an environmental impact assessment has been carried out in respect of that development.

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

(33) Section 171C was inserted by section 1 of the 1991 Act and amended by article 5(a) of S.I. 2004/3156 (W. 273).

(34) Section 171E was inserted by section 52 of the Planning and Compulsory Purchase Act 2004 (c. 5).

(35) Section 183 was substituted by section 9 of the 1991 Act.

(36) Section 187A was inserted by section 2 of the 1991 Act. There is a further amendment which is not relevant to Wales.

(37) Section 187B was inserted by section 3 of the 1991 Act.

(38) Section 174 was amended by sections 6, 32 and 84 of, and paragraph 22 of Part 1 to Schedule 19 to the 1991 Act, S.I. 2004/3156 (W. 273), section 63 of, and paragraphs 2 and 5 of Schedule 17 to the Enterprise and Regulatory Reform Act 2013 (c. 24) and by section 46 of the Planning (Wales) Act 2015 (anaw 4). There are other amendments which are not relevant to Wales. See also section 177(5) which was amended by paragraph 24 of Schedule 7 to the 1991 Act.

(39) Section 177 was amended by sections 6(3) and 32 of, and paragraph 24 of Schedule 7 to, the 1991 Act and by section 123(1), (6) of the Localism Act 2011 (c. 20) and by section 44(1) and (3) of the Planning (Wales) Act 2015. There is another amendment which is not relevant to this instrument.



### Screening opinions

**45.**—(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—

- (a) take such steps as appear to be reasonable to them in the circumstances, having regard to the requirements of regulation 6(2) and (4), to obtain information about unauthorised development to inform a screening opinion; and
- (b) adopt a screening opinion.

(2) Where it appears to such local planning authority 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 45 notice”) which must—

- (a) include the screening opinion required by paragraph (1); and
- (b) require a person who gives notice of an appeal under section 174 of the 1990 Act to submit to the Welsh Ministers with the notice two copies of an environmental statement relating to that EIA development.

(3) The local planning authority by whom a regulation 45 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 45 notice.

(4) Where a local planning authority provide the Welsh Ministers with a copy of a regulation 45 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

**46.**—(1) Any person on whom a regulation 45 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 45 notice;
- (b) a copy of the enforcement notice which it accompanied; and
- (c) the information required under, and representations made in accordance with, regulation 6(2), which must be prepared by the applicant in compliance with regulation 6(4).

(3) At the same time as applying to the Welsh Ministers, the applicant must send to the authority by whom the regulation 45 notice was served, a copy of the application and of the information and any 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) 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) Regulation 7(6) to (8) applies to a direction sought pursuant to paragraph (1).

(6) The Welsh Ministers must send a copy of the direction to the applicant.

(7) 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 45 notice was sent.

### **Provision of information**

47.—(1) The relevant planning authority and any person, other than the Welsh Ministers, to whom a copy of the regulation 45 notice has been sent (“the regulation 45 consultee”) must, if requested by the person on whom the regulation 45 notice was served, enter into consultation with that person to determine whether the regulation 45 consultee has in their possession any information which that person or the regulation 45 consultee considers relevant to the preparation of an environmental statement and if they have, the regulation 45 consultee must make any such information available to that person.

(2) Regulation 16(5) applies to information under paragraph (1) as it applies to any information falling within regulation 16(4).

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

48.—(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 49, 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, not exceeding 90 days from the date on which the person making the request submits the information required under regulation 46(2)(c).

(5) Where the Welsh Ministers consider that due to exceptional circumstances relating to the proposed development it is not practicable for them to adopt a screening direction within the period of 90 days beginning with the date of the request, the Welsh Ministers may extend that period by giving notice in writing to the person who made the request.

(6) The Welsh Ministers must state in any notice under paragraph (5) the reasons justifying the extension and the date when the determination is expected.

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

(8) 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 45 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.

(9) If an appellant to whom notice has been given under paragraph (8) fails to comply with the requirements of that notice, the appeal in so far as it is a ground (a) appeal, lapses at the end of the period specified in the notice.

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

**49.**—(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); 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 ground (a) appeal lapses at the end of the period allowed;
- (f) as soon as reasonably practicable after the occurrence of the lapse described in sub-paragraph (e), the Welsh Ministers must notify the appellant and the relevant planning authority that the ground (a) appeal has lapsed.

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

**50.** Where the Welsh Ministers receive (otherwise than as mentioned in regulation 49(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 ground (a) appeal, and inform them that they may make representations;
- (b) notify the persons to whom a copy of the relevant regulation 45 notice was sent that the statement will be taken into consideration in determining the ground (a) appeal, 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**

**51.** Regulation 24(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 24(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 the ground (a) appeal lapses at the end of that period.

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

**52.—**(1) Where an authority receive a copy of a statement by virtue of regulation 50(a) or any further information or 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 30 days later than the date on which the notice is published);
- (f) details of a website maintained by or on behalf of the relevant planning authority on which the environmental statement and other documents may be inspected, and the latest date on which they will be available for access (being a date not less than 30 days later than the date on which the notice is published);
- (g) 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, before the latest date stated in accordance with sub-paragraph (e) or (f), to the Welsh Ministers; and
- (h) 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) The relevant planning authority must make the environmental statement available for inspection on a website maintained by or on its behalf.

(4) Neither the Welsh Ministers receiving a certificate under paragraph (2) nor an inspector may determine the ground (a) appeal in respect of the development to which the certificate relates until the expiry of 30 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

**53.**—(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 45 notice given by the authority;
- (b) every notice received by the authority under regulation 49(2)(d); and
- (c) every statement and all further information received by the authority under regulation 50(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(40), 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.

(3) The provisions of paragraphs (2) and (3) of regulation 29 apply to 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

**54.** Regulation 56 applies to unauthorised EIA development as if—

- (a) regulation 56(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 56(3)(a), “a copy of the application concerned” read “a description of the development concerned”;
- (c) in regulation 56(6) “application” read “appeal”.

## PART 11

### ROMP Applications

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

**55.**—(1) In this regulation and in Schedule 8—

“the General Regulations” (“*yRheoliadau Cyffredinol*”) means the Town and Country Planning General Regulations 1992(41);

“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;

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

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

(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)<sup>(42)</sup>;

“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—

(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” (“*cydsyniad dilynol ROMP*”) means consent granted pursuant to a ROMP subsequent application; and

“undetermined ROMP application” (“*cais ROMP amhenderfynedig*”) has the same meaning as in regulation 2 of the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009<sup>(43)</sup>.

(2) Subject to paragraph (3) and to the modifications and additions set out in Schedule 8, 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—

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<sup>(42)</sup> Paragraph 6 was amended by S.I. 2004/3156 (W. 273). There is another amendment which is not relevant to these Regulations.

<sup>(43)</sup> S.I. 2009/3342 (W. 293).

- (a) any undetermined ROMP application to which the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009 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**

**56.**—(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 the date of publication in the London Gazette referred to in sub-paragraph (ii), the particulars mentioned in paragraph (2) and, if relevant, the information referred to in paragraph (3);
- (ii) publish in a notice in the London Gazette the information in paragraph (2) and, if relevant, the information referred to in paragraph (3) and an 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 EEA 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) details of the authority responsible for deciding the application;
- (c) a copy of any planning permission relating to the development;
- (d) a copy of any environmental statement in respect of the development; and
- (e) 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 ensure that the EEA state concerned is given an opportunity, before planning permission for the development is granted, to forward to the Welsh Ministers, within a reasonable time, the opinions of its public and of the authorities likely to be concerned by the project by reason of their specific environmental responsibilities 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 copy of the information referred to in regulation 28.

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

57.—(1) Where the Welsh Ministers receive from another EEA State, pursuant to Article 7(1) or (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 and for a time period of no less than 30 days, 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) make available to the public concerned any information received from the competent authority of the relevant EEA State in order to comply with Article 9(2) of the Directive.

## **PART 13**

### **Miscellaneous**

#### **Objectivity and bias**

58.—(1) Where a local planning authority or the Welsh Ministers have a duty under these Regulations, they must perform that duty in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where a local planning authority, or the Welsh Ministers are acting as a developer and that authority or the Welsh Ministers, as the case may be, are also responsible for determining their own proposal, that authority or the Welsh Ministers, as the case may be, must make appropriate administrative arrangements to ensure that there is a functional separation between those persons who seek or require permission for development and the persons responsible for determining that proposal.



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

**59.** For the purposes of Part 12 of the 1990 Act (validity of certain decisions), the reference in section 288(1)(b)(**44**) 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 [44](#).

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

**60.** 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**

**61.—**(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—

- (a) the authority have notified an applicant in accordance with regulation [11\(1\)](#) 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,

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 decisions) and 23 (applications made under planning condition) of the 2012 Order have effect as if—

- (a) each of the references in articles 22(2)(a) and 23 to a period of 8 weeks is a reference to a period of 16 weeks; and
- (b) the reference in article 22(2)(aa)(**45**) to the period of 12 weeks is a reference to the period of 20 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**

**62.** Provisions included in a development order by virtue of section 60 of the 1990 Act (permission granted by development order)(**46**) 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**

**63.—**(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 [12](#) (application referred to the Welsh Ministers without an environmental statement) is to be read as if—

- (a) in paragraph (1)—

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

(45) Sub-paragraph (aa) of article 22(2) was inserted by article 11(b) of the Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016 ([S.I. 2016/59 \(W. 29\)](#)).

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

- (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)(47) or”; and
- (ii) before “referral” it read “making or the”;
- (b) in paragraph (2), before “referral”, it read “making or the”; and
- (c) in paragraph (3), before “referred” in the first place it occurs, it read “made under section 293A of the 1990 Act or”.

### **Amendment of other instruments**

**64.** The instruments in Schedule 9 are amended to the extent set out in that Schedule.

### **Revocation, saving and transitional provisions**

**65.**—(1) The 2016 Regulations are revoked, but this is subject to paragraphs (2) to (8).

(2) Where the condition in paragraph (3) applies the 2016 Regulations continue to have effect in respect of the following—

- (a) an application for planning permission;
- (b) a ROMP application to which the 2016 Regulations apply;
- (c) an appeal in relation to an application within sub-paragraph (a) or (b);
- (d) a matter in relation to which a local planning authority have issued an enforcement notice under section 172 of the 1990 Act.

(3) For the purposes of paragraph (2), the condition is that before 16 May 2017 the applicant or appellant (as the case may be) has—

- (a) requested a scoping opinion or a scoping direction; or
- (b) submitted an environmental statement,  
in respect of the development to which the application or appeal relates.

(4) Where the condition in paragraph (5) applies the 2016 Regulations continue to have effect in respect of the following—

- (a) a proposed local development order;
- (b) a proposed section 97 or a section 102 order.

(5) For the purposes of paragraph (4), the condition is that before 16 May 2017 the local planning authority, the initiating body or the applicant (as the case may be) has—

- (a) requested a scoping opinion or a scoping direction; or
- (b) prepared an environmental statement,  
in respect of the development to which the proposed order relates.

(6) The 2016 Regulations continue to have effect in respect of proposed action under section 141 of the 1990 Act where before 16 May 2017 the applicant, as defined in paragraph 3 of Schedule 7, has—

- (a) requested a scoping opinion or a scoping direction; or
- (b) submitted an environmental statement,

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(47) 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 paragraphs 1 and 17(1) to (3) of Schedule 4 to the Planning (Wales) Act 2015. 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.

in respect of the development to which the proposed action relates.

(7) Parts 1 and 2 of the 2016 Regulations continue to have effect in respect of—

- (a) requests for a screening opinion or screening direction;
- (b) screening opinions adopted by the relevant planning authority; and
- (c) screening directions made by the Welsh Ministers,

where, before 16 May 2017, such requests were made, or the local planning authority or the Welsh Ministers (as the case may be) initiated the making or adoption of screening opinions or screening directions.

(8) The 2016 Regulations continue to have effect for the purposes of the Town and Country Planning (Undetermined Reviews of Old Mineral Permissions)(Wales) Regulations 2009<sup>(48)</sup>.

(9) Accordingly, these Regulations (other than this regulation) do not apply in respect of development to which the 2016 Regulations continue to have effect by virtue of any of paragraphs (2) to (8).

(10) In this regulation—

“2016 Regulations” (“*Rheoliadau 2016*”) means the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016<sup>(49)</sup>;

“environmental statement” (“*datganiad amgylcheddol*”), scoping direction” (“*cyfarwyddyd cwmpasu*”) and “scoping opinion” (“*barn gwmpasu*”) have the meanings in regulation 2 of the 2016 Regulations; and

“ROMP” (“*ROMP*”) and “ROMP application” (“*cais ROMP*”) have the same meaning as in regulation 55(1).

### **Consequential amendments**

66. The instruments in Schedule 10 are amended to the extent shown in that Schedule.

20 April 2017

*Lesley Griffiths*  
Cabinet Secretary for Environment and Rural  
Affairs, one of the Welsh Ministers

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<sup>(48)</sup> S.I. 2009/3342 (W. 293) as amended by S.I. 2003/755 (W. 90) and S.I. 2016/58 (W. 28) see for ROMP applications made before 15 November 2000.

<sup>(49)</sup> S.I. 2016/58 (W. 28).

## SCHEDULE 1

Regulation 2(1)

Descriptions of development for the purposes of the definition of “Schedule 1 development”

**Interpretation**

In this Schedule—

“airport” (“*maes awyrr*”) means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14)(**50**);

“express road” (“*gwibffordd*”) means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975(**51**);

“nuclear power station” (“*gorsaf bŵer niwclear*”) and “other nuclear reactor” (“*adweithydd niwclear arall*”) do not include an installation from the site of which all nuclear fuel and other radioactive contaminated materials have been permanently removed; and development for the purpose of dismantling or decommissioning a nuclear power station or other nuclear reactor is not to be treated as development of the description mentioned in paragraph 2(b) of this Schedule.

**Descriptions of development**

The carrying out of development to provide any of the following—

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2.

(a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more; and

(b) Nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3.

(a) Installations for the reprocessing of irradiated nuclear fuel;

(b) Installations designed—

(i) for the production or enrichment of nuclear fuel;

(ii) for the processing of irradiated nuclear fuel or high-level radioactive waste;

(iii) for the final disposal of irradiated nuclear fuel;

(iv) solely for the final disposal of radioactive waste;

(v) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

4.

(a) Integrated works for the initial smelting of cast-iron and steel;

(b) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

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(50) See Command Paper 6614.

(51) See Command Paper 6993.

5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos—

- (a) for asbestos-cement products, with an annual production of more than 20,000 tonnes of finished products;
- (b) for friction material, with an annual production of more than 50 tonnes of finished products; and
- (c) for other uses of asbestos, utilisation of more than 200 tonnes per year.

6. Integrated chemical installations, that is to say, installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are—

- (a) for the production of basic organic chemicals;
- (b) for the production of basic inorganic chemicals;
- (c) for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers);
- (d) for the production of basic plant health products and of biocides;
- (e) for the production of basic pharmaceutical products using a chemical or biological process;
- (f) for the production of explosives.

7.

- (a) Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2,100 metres or more;
- (b) Construction of motorways and express roads;
- (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 kilometres or more in a continuous length.

8.

- (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes;
- (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.

9. Waste disposal installations for the incineration, chemical treatment (as defined in Annex IIA to Council Directive [75/442/EEC](#)(52) under heading D9), or landfill of hazardous waste as defined in regulation 6 of the Hazardous Waste (Wales) Regulations 2005(53).

10. Waste disposal installations for the incineration or chemical treatment (as defined in Annex IIA to Council Directive [75/442/EEC](#) under heading D9) of non-hazardous waste with a capacity exceeding 100 tonnes per day.

11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

12.

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(52) O.J. No. L 194, 25.7.1975, p. 39. Council Directive [75/442/EEC](#) was amended by Council Directive [91/156/EEC](#) (O.J. No. L 78, 26.3.1991, p. 32) and by Commission Decision [94/3/EC](#) (O.J. No. L 5, 7.1.1994, p. 15).

(53) [S.I. 2005/1806 \(W. 138\)](#).

- (a) Works for the transfer of water resources, other than piped drinking water, between river basins where the transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year;
  - (b) In all other cases, works for the transfer of water resources, other than piped drinking water, between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5% of this flow.
- 13.** Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2 point (6) of Council Directive [91/271/EEC](#)(**54**).
- 14.** Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.
- 15.** Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
- 16.** Pipelines with a diameter of more than 800 millimetres and a length of more than 40 kilometres:
- for the transport of gas, oil, chemicals, or
  - for the transport of carbon dioxide streams for the purposes of geological storage, including associated booster stations.
- 17.** Installations for the intensive rearing of poultry or pigs with more than—
- (a) 85,000 places for broilers or 60,000 places for hens;
  - (b) 3,000 places for production pigs (over 30 kg); or
  - (c) 900 places for sows.
- 18.** Industrial plants for—
- (a) the production of pulp from timber or similar fibrous materials;
  - (b) the production of paper and board with a production capacity exceeding 200 tonnes per day.
- 19.** Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction where the surface of the site exceeds 150 hectares.
- 20.** Installations for storage of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more.
- 21.** Storage sites pursuant to Directive [2009/31/EC](#) of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide(**55**).
- 22.** Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to Directive [2009/31/EC](#) from installations covered by this Schedule, or where the total yearly capture of carbon dioxide is 1.5 megatonnes or more.
- 23.** Any change to or extension of development listed in this Schedule where such a change or extension in itself meets the thresholds, if any, or description of development set out in this Schedule.

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(54) O.J. No. L 135, 30.5.1991, p. 40.

(55) O. J. No L 140, 5.6.2009, p. 114.

## SCHEDULE 2

Regulation 2(1)

Descriptions of development and applicable thresholds and criteria  
for the purposes of the definition of “Schedule 2 development”

## 1. In the table below—

“area of the works” (“*arwynebedd gwaith*”) includes any area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps or other facilities or stores required for construction or installation;

“controlled waters” (“*dyfroedd a reolir*”) has the same meaning as in the Water Resources Act 1991(56);

“floorspace” (“*arwynebedd llawr*”) means the floorspace in a building or buildings.

2. The table below sets out the descriptions of development and applicable thresholds and criteria for the purpose of classifying development as Schedule 2 development.

<i>Column 1</i>	<i>Column 2</i>
<i>Description of development</i>	<i>Applicable thresholds and criteria</i>
The carrying out of development to provide any of the following—	
<b>1 Agriculture and aquaculture</b>	
(a) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;	The area of the development exceeds 0.5 hectare.
(b) Water management projects for agriculture, including irrigation and land drainage projects;	The area of the works exceeds 1 hectare.
(c) Intensive livestock installations (unless included in Schedule 1);	The area of new floorspace exceeds 500 square metres.
(d) Intensive fish farming;	The installation resulting from the development is designed to produce more than 10 tonnes of dead weight fish per year.
(e) Reclamation of land from the sea.	All development.
<b>2 Extractive industry</b>	
(a) Quarries, open cast mining and peat extraction (unless included in Schedule 1);	All development except the construction of buildings or other ancillary structures where the new floorspace does not exceed 1,000 square metres.
(b) Underground mining;	
(c) Extraction of minerals by fluvial or marine dredging;	All development.
(d) Deep drillings, in particular—	(i) In relation to any type of drilling, the area of the works exceeds 1 hectare; or  (ii) in relation to geothermal drilling and drilling for the storage of nuclear waste
(i) geothermal drilling;	

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(56) 1991 c. 57. See section 104.

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<b>2 Extractive industry</b>	
(ii) drilling for the storage of nuclear waste material;	material, the drilling is within 100 metres of any controlled waters.
(iii) drilling for water supplies;	
with the exception of drillings for investigating the stability of the soil;	
(e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.	The area of the development exceeds 0.5 hectare.
<b>3 Energy industry</b>	
(a) Industrial installations for the production of electricity, steam and hot water (unless included in Schedule 1);	The area of the development exceeds 0.5 hectare.
(b) Industrial installations for carrying gas, steam and hot water;	The area of the works exceeds 1 hectare.
(c) Surface storage of natural gas;	(i) The area of any new building, deposit or structure exceeds 500 square metres; or  (ii) a new building, deposit or structure is to be sited within 100 metres of any controlled waters.
(d) Underground storage of combustible gases;	
(e) Surface storage of fossil fuels;	
(f) Industrial briquetting of coal and lignite;	The area of new floorspace exceeds 1,000 square metres.
(g) Installations for the processing and storage of radioactive waste (unless included in Schedule 1);	(i) The area of new floorspace exceeds 1,000 square metres; or  (ii) the installation resulting from the development will require the grant of an environmental permit under the Environmental Permitting (England and Wales) Regulations 2010 <sup>(57)</sup> in relation to a radioactive substances activity described in paragraph 11(2)(b), (2)(c) or (4) of Part 2 of Schedule 23 to those Regulations, or the variation of such a permit.
(h) Installations for hydroelectric energy production;	The installation is designed to produce more than 0.5 megawatts.
(i) Installations for the harnessing of wind power for energy production (wind farms);	(i) The development involves the installation of more than 2 turbines; or  (ii) the hub height of any turbine or height of any other structure exceeds 15 metres.

<sup>(57)</sup> S.I. 2010/675.



<b>3 Energy industry</b>	
(j) Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to Directive <a href="#">2009/31/EC</a> from installations not included in Schedule 1.	All development.
<b>4 Production and processing of metals</b>	
<p>(a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;</p> <p>(b) Installations for the processing of ferrous metals—</p> <p>(i) hot-rolling mills;</p> <p>(ii) smitheries with hammers;</p> <p>(iii) application of protective fused metal coats;</p> <p>(c) Ferrous metal foundries;</p> <p>(d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);</p> <p>(e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;</p> <p>(f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;</p> <p>(g) Shipyards;</p> <p>(h) Installations for the construction and repair of aircraft;</p> <p>(i) Manufacture of railway equipment;</p> <p>(j) Swaging by explosives;</p> <p>(k) Installations for the roasting and sintering of metallic ores.</p>	The area of new floorspace exceeds 1,000 square metres.

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<i>5 Mineral industry</i>	
(a) Coke ovens (dry coal distillation); (b) Installations for the manufacture of cement; (c) Installations for the production of asbestos and the manufacture of asbestos-based products (unless included in Schedule 1); (d) Installations for the manufacture of glass including glass fibre; (e) Installations for smelting mineral substances including the production of mineral fibres; (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.	The area of new floorspace exceeds 1,000 square metres.
<i>6 Chemical industry (unless included in Schedule 1)</i>	
(a) Treatment of intermediate products and production of chemicals; (b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;	The area of new floorspace exceeds 1,000 square metres.
(c) Storage facilities for petroleum, petrochemical and chemical products.	(i) The area of any new building or structure exceeds 0.05 hectare; or  (ii) more than 200 tonnes of petroleum, petrochemical or chemical products is to be stored at any one time.
<i>7 Food industry</i>	
(a) Manufacture of vegetable and animal oils and fats; (b) Packing and canning of animal and vegetable products; (c) Manufacture of dairy products; (d) Brewing and malting; (e) Confectionery and syrup manufacture; (f) Installations for the slaughter of animals; (g) Industrial starch manufacturing installations;	The area of new floorspace exceeds 1,000 square metres.

<b>7 Food industry</b>	
(h) Fish-meal and fish-oil factories;	
(i) Sugar factories.	
<b>8 Textile, leather, wood and paper industries</b>	
(a) Industrial plants for the production of paper and board (unless included in Schedule 1);	The area of new floorspace exceeds 1,000 square metres.
(b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;	
(c) Plants for the tanning of hides and skins;	
(d) Cellulose-processing and production installations.	
<b>9. Rubber industry</b>	
Manufacture and treatment of elastomer-based products.	The area of new floorspace exceeds 1,000 square metres.
<b>10. Infrastructure projects</b>	
(a) Industrial estate development projects;	The area of the development exceeds 5 hectares.
(b) Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas;	(i) The development includes more than 1 hectare of urban development which is not dwellinghouse development; or (ii) the development includes more than 150 dwellinghouses; or (iii) the overall area of the development exceeds 5 hectares.
(c) Construction of intermodal transshipment facilities and of intermodal terminals (unless included in Schedule 1);	The area of the development exceeds 0.5 hectare.
(d) Construction of railways (unless included in Schedule 1);	The area of the works exceeds 1 hectare.
(e) Construction of airfields (unless included in Schedule 1);	(i) The development involves an extension to a runway; or (ii) the area of the works exceeds 1 hectare.
(f) Construction of roads (unless included in Schedule 1);	The area of the works exceeds 1 hectare.

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<b>10. Infrastructure projects</b>	
(g) Construction of harbours and port installations including fishing harbours (unless included in Schedule 1);	The area of the works exceeds 1 hectare.
(h) Inland-waterway construction not included in Schedule 1, canalisation and flood-relief works;	The area of the works exceeds 1 hectare.
(i) Dams and other installations designed to hold water or store it on a long-term basis (unless included in Schedule 1);	
(j) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;	
(k) Oil and gas pipeline installations and pipelines for the transport of carbon dioxide streams for the purposes of geological storage (unless included in Schedule 1);	(i) The area of the works exceeds 1 hectare; or,
(l) Installations of long-distance aqueducts;	(ii) in the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge.
(m) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;	All development.
(n) Groundwater abstraction and artificial groundwater recharge schemes not included in Schedule 1;	The area of the works exceeds 1 hectare.
(o) Works for the transfer of water resources between river basins not included in Schedule 1;	
(p) Motorway service areas.	The area of the development exceeds 0.5 hectare.
<b>II Other projects</b>	
(a) Permanent racing and test tracks for motorised vehicles;	The area of the development exceeds 1 hectare.
(b) Installations for the disposal of waste (unless included in Schedule 1);	(i) The disposal is by incineration; or (ii) the area of the development exceeds 0.5 hectare; or (iii) the installation is to be sited within 100 metres of any controlled waters.
(c) Waste-water treatment plants (unless included in Schedule 1);	The area of the development exceeds 1,000 square metres.

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<b>11 Other projects</b>	
(d) Sludge-deposition sites;	(i) The area of deposit or storage exceeds 0.5 hectare; or
(e) Storage of scrap iron, including scrap vehicles;	(ii) a deposit is to be made or scrap stored within 100 metres of any controlled waters.
(f) Test benches for engines, turbines or reactors;	The area of new floorspace exceeds 1,000 square metres.
(g) Installations for the manufacture of artificial mineral fibres;	
(h) Installations for the recovery or destruction of explosive substances;	
(i) Knackers' yards.	
<b>12 Tourism and leisure</b>	
(a) Ski-runs, ski-lifts and cable-cars and associated developments;	(i) The area of the works exceeds 1 hectare; or
	(ii) the height of any building or other structure exceeds 15 metres.
(b) Marinas;	The area of the enclosed water surface exceeds 1,000 square metres.
(c) Holiday villages and hotel complexes outside urban areas and associated developments;	The area of the development exceeds 0.5 hectare.
(d) Theme parks;	
(e) Permanent camp sites and caravan sites;	The area of the development exceeds 1 hectare.
(f) Golf courses and associated developments.	The area of the development exceeds 1 hectare.
<b>13 Changes and extensions</b>	
(a) Any change to or extension of development of a description listed in Schedule 1 (other than a change or extension falling within paragraph 23 of that Schedule) where that development is already authorised, executed or in the process of being executed.	The development as changed or extended may have significant adverse effects on the environment.
(b) Any change to or extension of development of a description listed in paragraphs 1 to 12 of column 1 of this table, where that development is already authorised, executed or in the process of being executed.	(a) The thresholds and criteria in the corresponding part of Column 2 of this table applied to the development as changed or extended are met or exceeded; and

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<b>13 Changes and extensions</b>	
	(b) in such a case the development as changed or extended may have significant adverse effects on the environment.
(c) Development of a description mentioned in Schedule 1 undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.	All development.

## SCHEDULE 3

Regulations 5(8), (9), (13), 6(4), and 31(3)

## Selection criteria for screening Schedule 2 development

**Characteristics of development**

1. The characteristics of development must be considered having regard, in particular, to—
  - (a) the size and design of the development;
  - (b) the cumulation with other existing development and/or approved development;
  - (c) the use of natural resources, in particular land, soil, water and biodiversity;
  - (d) the production of waste;
  - (e) pollution and nuisances;
  - (f) the risk of major accidents and/or disasters relevant to the development concerned, including those caused by climate change, in accordance with scientific knowledge;
  - (g) the risks to human health (for example due to water contamination or air pollution).

**Location of development**

2. The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to—
  - (a) the existing and approved land use;
  - (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
  - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
    - (i) wetlands, riparian areas, river mouths;
    - (ii) coastal zones and the marine environment;
    - (iii) mountain and forest areas;
    - (iv) nature reserves and parks;
    - (v) European sites and other areas classified or protected under national legislation;
    - (vi) areas in which there has already been a failure to meet the environmental quality standards laid down in Union legislation and relevant to the project, or in which it is considered there is such a failure;
    - (vii) densely populated areas;
    - (viii) landscapes and sites of historical, cultural or archaeological significance.

### **Types and characteristics of the potential impact**

3. The likely significant effects of the development on the environment must be considered in relation to criteria set out under paragraphs 1 and 2, with regard to the impact of the development on the factors specified in regulation 4(2), taking into account—

- (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
- (b) the nature of the impact;
- (c) the transboundary nature of the impact;
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and/or approved development;
- (h) the possibility of effectively reducing the impact.

## SCHEDULE 4

Regulation 17(3)

### Information for inclusion in environmental statements

1. Description of the development, including in particular—

- (a) a description of the location of the development;
- (b) a description of the physical characteristics of the whole development, including, where relevant, requisite demolition works and the land-use requirements during the construction and operational phases;
- (c) a description of the main characteristics of the operational phase of the development (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, oil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operational phases.

2. A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the applicant or appellant which are relevant to the proposed development and its specific characteristics and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

4. A description of the factors specified in regulation 4(2) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the development on the environment resulting from, inter alia—

- (a) the construction and existence of the development, including, where relevant, demolition works;
- (b) the use of natural resources in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances and the disposal and recovery of waste,
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in regulation 4(2) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at European Union or Member State level which are relevant to the project, including in particular those established under Council Directive 92/43/EEC(58) and Directive 2009/147/EC(59).

6. A description of the forecasting methods or evidence used to identify and assess the effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

8. A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to European Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of the Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under paragraphs 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the environmental statement.

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(58) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora O.J. L 206, 22/07/1992 pp. 7–50.

(59) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds O.J. L 20, 26/1/2010, pp. 7–25.



## SCHEDULE 5

Regulation 39(3)

### Local Development Orders

1. In a case to which this Schedule has effect, these Regulations apply, subject to the following modifications.
2. Regulations 3, 9, 10, 12, 13, 20 and 21 do not apply.
3. In regulation 5—
  - (a) paragraph (2)(a) does not apply;
  - (b) in paragraph (2)(b) and (5), for “relevant” read “local”;
  - (c) read as if paragraphs (10) and (16) were omitted.
4. Regulation 11 applies as if references to—
  - (a) an application, or an application for planning permission, are to a proposal for a local development order;
  - (b) a relevant planning authority, are to the local planning authority to whom it would fall to make the local development order;
  - (c) the applicant, are to the local planning authority proposing the order; and
  - (d) the EIA application, are to a proposal for a local development order for EIA development.
5. Regulation 14 is to be read as if it provided—

#### “Scoping opinions

14.—(1) Where a proposed local development order is EIA development, the local planning authority may state its opinion as to the scope and level of detail of the information to be provided in the environmental statement (“a scoping opinion”).

(2) Before issuing a scoping opinion under paragraph (1) the local planning authority must prepare—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the development including its location and technical capacity;
- (c) its likely significant effects on the environment; and
- (d) such other information or representations as the local planning authority may wish to provide or make.

(3) A local planning authority must not adopt a scoping opinion until they have consulted the consultees.

(4) Before adopting a scoping opinion the local planning authority must take into account —

- (a) the information prepared by the authority about the proposed development in accordance with paragraph (2);
- (b) the specific characteristics of the particular development;
- (c) the specific characteristics of development of the type concerned; and
- (d) the environmental features likely to be affected by the development.

(5) A local planning authority may ask the Welsh Ministers under regulation 15(1) to make a direction as to the information to be provided in the environmental statement (“scoping direction”).”

6. Regulation 15 is to be read as if it provided—

**“Scoping directions**

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

- (a) the information referred to in regulation 14(2)(a)(i) to (iii); and
- (b) any representations that the local planning authority wish to make.

(2) 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 local planning authority.

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

(4) The Welsh Ministers must—

- (a) consult 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 local planning authority, within 5 weeks beginning with the date of receipt of that request or such longer period as may be reasonably required.

(5) Before making a scoping direction the Welsh Ministers must take into account the matters specified in regulation 14(4).”

7. Regulation 16 is to be read as if it provided—

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

16.—(1) A local planning authority which intend to prepare an environmental statement may enquire of a consultee whether the consultee has any information which the consultee or the local planning authority consider relevant to the preparation of the environmental statement.

(2) If the consultee has such information it must treat the enquiry by the authority as a request for information by the local planning authority under regulation 5(1) of the Environmental Information Regulations 2004(60).”

8. Regulation 17 is to be read as if—

- (a) paragraphs (1) and (2) were omitted;
- (b) in paragraph (3)(d), for “applicant or appellant” it read “local planning authority”;
- (c) in paragraph (4)—
  - (i) in sub-paragraph (a), “or the Welsh Ministers, as appropriate,” were omitted; and
  - (ii) in sub-paragraph (b), for “applicant” it read “local planning authority”.

9. Regulation 18 is to be read as if it provided—

**“Procedure where an environmental statement is prepared in relation to a local development order**

18.—(1) Where a statement, referred to as an “environmental statement”, has been prepared in relation to EIA development for which a local planning authority propose to grant planning permission by a local development order, the local planning authority must—

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(60) S.I. 2004/3391.

- (a) send a copy of the statement to the consultees and inform them that they may make representations; and
- (b) notify any particular person of whom the authority are aware, who is likely to be affected by, or has an interest in, the application and who is unlikely to become aware of it by means of electronic publication, a site notice or by local advertisement, of an address in the locality in which the land is situated where a copy of the statement may be obtained and the address to which representations may be sent.

(2) The local planning authority must not make the local development order until the expiry of 30 days from the last date on which a copy of the statement was served in accordance with this regulation.”

**10.** Regulation 19 is to be read as if—

- (a) paragraph (1) were omitted;
- (b) paragraph (2) read—

“(2) The local planning authority must publish by local advertisement a notice stating—

- (a) the name and address of the local planning authority;
- (b) the address or location and the nature of the development referred to in the proposed local development order;
- (c) that a copy of the draft order and of any plan or other documents accompanying it together with a copy of the environmental statement may be inspected by members of the public at all reasonable hours;
- (d) 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 30 days from the date on which the notice is published);
- (e) details of a website maintained by or on behalf of the relevant planning authority on which the environmental statement and other documents may be inspected, and the latest date on which they will be available for access (being a date not less than 30 days from the date on which the notice is published);
- (f) an address (whether or not the same as that given under sub-paragraph (d)) 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; and
- (i) that any person wishing to make representations about the order should make them before the latest date in accordance with sub-paragraph (d) or (e), to the local planning authority.”;

- (c) paragraph (3) were omitted;
- (d) in paragraph (4), “applicant” read “local planning authority”; and
- (e) paragraphs (6) to (8) were omitted.

**11.** Regulation 22 is to be read as if it provided—

**“Availability of copies of environmental statements**

22. The local planning authority must ensure that a reasonable number of copies of the statement referred to as the environmental statement prepared in relation to EIA development for which the authority propose to grant planning permission by a local development order, are available at—

- (a) their principal office during normal office hours; and
  - (b) at such other places within their area as they consider appropriate; and
- the environmental statement can be accessed at the website referred to in the notice required under regulation 19(2)(e).”

12. Regulation 24 is to be read as if—

(a) paragraph (1) read—

“(1) Where an environmental statement has been prepared and the local planning authority are of the opinion that, in order to satisfy the requirements of regulation 17(3) it is necessary for the statement to be supplemented with additional information which is directly relevant to reaching a reasoned conclusion on the likely significant effects of the proposed development in order to be an environmental statement, the authority must ensure that additional information is provided, and such information is referred to in these Regulations as “further information” (“*gwybodaeth bellach*”).”;

(b) paragraph (3) read—

“(3) The local planning authority must publish by local advertisement a notice stating—

- (a) the name and address of the authority;
- (b) the address or location and the nature of the development referred to in the proposed local development order;
- (c) that further information is available in relation to an environmental statement which has already been provided;
- (d) that a copy of the further information 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 further information may be inspected, and the latest date on which it is available for inspection (being a date not less than 30 days from the date on which the notice is published);
- (f) details of a website maintained by or on behalf of the authority on which the environmental statement and other documents may be inspected, and the latest date on which they are available for access (being a date not less than 30 days from the date on which the notice is published);
- (g) 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 further information may be obtained;
- (h) that copies may be obtained there so long as stocks last;
- (i) if a charge is to be made for a copy, the amount of the charge;
- (j) that any person wishing to make representations about the further information should make them before the latest date specified in accordance with sub-paragraphs (e) and (f), to the authority; and
- (k) the address to which representations should be sent.”;

(c) paragraph (4) read—

“(4) The local planning authority must send a copy of the further information and any other information to each person to whom, in accordance with these Regulations, the statement to which it relates was sent and to the Welsh Ministers.”;

(d) paragraphs (5) and (6) were omitted;

(e) paragraph (7) read—

“(7) Where information is provided under paragraph (1) the local planning authority must not make the local development order before the expiry of 30 days after the latest of—

(a) the date on which the further information was sent to all persons to whom the statement to which it relates was sent;

(b) the date that notice of it was published in a local newspaper; or

(c) the date that notice of it was published on a website.”;

(f) in paragraph (8)—

(i) instead of “The applicant or appellant who provides” it read “The local planning authority providing”; and

(ii) in sub-paragraph (a), after “number of copies of the” it read “further information or other”.

**13.** Regulation 25 is to be read as if in paragraph (1) “an application or appeal” read “whether to make a local development order”.

**14.** Regulation 27 is to be read as if paragraphs (1) and (2) read—

“(1) Where particulars of a draft local development order are placed on Part 3 of the register, the local planning authority must take steps to secure that there is also placed on that Part a copy of any relevant—

(a) screening opinion;

(b) screening direction;

(c) scoping opinion;

(d) direction under regulation 5(4) or (5);

(e) statement referred to as the environmental statement including any further information;

(f) statement of reasons accompanying any of the above.

(2) Where the relevant planning authority adopt a screening opinion or scoping opinion, or receive a copy of a screening direction before a local development order is made, the local planning authority must take steps to secure that a copy of the opinion or direction and any accompanying statement of reasons is made available for public inspection at all reasonable hours at the place where the appropriate register (or relevant section of that register) is kept.”

**15.** Regulation 28 is to be read as if paragraph (1) read—

“(1) Where a local planning authority make a local development order granting permission for EIA development, they must prepare a statement setting out the information specified in paragraph (2).”

**16.** Regulation 29 is to be read as if—

(a) in paragraph (1) for “Where an EIA application is determined by a local planning authority” it read “Where a local planning authority adopt a local development order granting permission for development which constitutes EIA development”;

- (b) paragraph (2) was omitted; and
  - (c) in paragraph (3) the reference to “relevant planning authority” read “local planning authority”.
17. Regulation 56 is to be read as if—
- (a) paragraph (1)(a) read—
    - “(a) it comes to the attention of the Welsh Ministers that EIA development proposed to be carried out in Wales for which a local planning authority propose to grant planning permission by a local development order is likely to have significant effects on the environment in another EEA State; or”; and
  - (b) in paragraphs (3) and (6), instead of “application” it read “proposed local development order”.

## SCHEDULE 6

Regulation 40

### Section 97 and 102 Orders under the 1990 Act

1. In a case to which this Schedule has effect, these Regulations apply subject to the following modifications.
2. Regulations 3, 7(2), 9, 10, 12(1), (2) and (8), 13 and 21 do not apply.
3. In this Schedule and in the application of these Regulations by this Schedule, references to the “relevant planning authority” are to the local planning authority to whom it would fall to make the section 97 order or the section 102 order, whether or not they are the initiating body.
4. Regulation 5 is to be read as if—
  - (a) paragraph (2)(a) does not apply;
  - (b) in paragraph (2)(b), for “relevant” read “local”;
  - (c) paragraph (10) is omitted.
5. Regulations 8, 11 and 12(3) to (8) apply as if references to—
  - (a) an application or an application for planning permission, are to a proposal for a section 97 order or a section 102 order;
  - (b) the applicant are to the initiating body; and
  - (c) an EIA application, are to a proposal for a section 97 order or a section 102 order granting or modifying planning permission for EIA development.
6. Regulation 12(8) is to be read as if “by refusing planning permission or subsequent consent” read “by refusing to make or confirm the section 97 or section 102 order”.
7. Regulation 14 and its heading are to be read as if they provided—

#### “Scoping opinions and scoping directions

14.—(1) Where a proposed section 97 order or section 102 order permit or require EIA development, the initiating body may state its opinion as to the scope and level of detail of the information to be provided in the environmental statement.

(2) Before issuing a scoping opinion or scoping direction under paragraph (1) the initiating body must include—

- (a) a plan sufficient to identify the land;

- (b) a brief description of the nature and purpose of the development including its location and technical capacity;
  - (c) its likely significant effects on the environment; and
  - (d) such other information or representations as the initiating body may wish to provide or make.
- (3) An initiating body must not adopt a scoping opinion or scoping direction until they have consulted the consultees.
- (4) Before adopting a scoping opinion or scoping direction the initiating body must take into account—
- (a) the information prepared by the initiating body about the proposed development in accordance with paragraph (2);
  - (b) the specific characteristics of the particular development;
  - (c) the specific characteristics of development of the type concerned; and
  - (d) the environmental features likely to be affected by the development.
- (5) A local planning authority may ask the Welsh Ministers under regulation 15(1) to make a direction as to the information to be provided in the environmental statement.
- (6) If the Welsh Ministers make a scoping direction of their own volition or at the request of a third party, they must send a copy to the local planning authority which initiated the order.”

**8. Regulation 15 is to be read as if it provided—**

**“Scoping directions**

- 15.—**(1) A request made under this paragraph pursuant to regulation 14 must include—
- (a) the information referred to in regulation 14(2); and
  - (b) any representations that the local planning authority wishes to make.
- (2) 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 local planning authority.
- (3) The notice must set out any points on which additional information is required.
- (4) The Welsh Ministers must—
- (a) consult 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 local planning authority, within 5 weeks beginning with the date of receipt of that request or such longer period as may be reasonably required.
- (5) Before making a scoping direction the Welsh Ministers must take into account the matters specified in regulation 14(4).”

**9. Regulation 16 is to be read as if it provided—**

- “16.—**(1) An initiating body which intends to prepare an environmental statement may consult with a consultee in order to determine whether the consultee has any information which the consultee or the initiating body considers relevant to the preparation of the environmental statement.

(2) If the consultee has such information, the consultee must treat the consultation by the initiating body as a request for information by the local planning authority under regulation 5(1) of the Environmental Information Regulations 2004(61).”

10. Regulation 17 is to be read as if—

- (a) Paragraph (1) is omitted;
- (b) in paragraph (3)(d), for “applicant or appellant” it read “initiating body”;
- (c) in paragraph (4)(b), for “applicant or appellant” it read “initiating body”.

11. Regulation 18 is to be read as if it provided—

“18.—(1) Where a statement, referred to as an environmental statement, has been prepared by an initiating body in relation to development which is related to a section 97 order or section 102 order, that body must—

- (a) send a copy of the draft section 97 order or draft section 102 order and the statement to the consultees and inform them that they may make representations; and
- (b) notify any particular person of whom the body is aware and who is likely to be affected by, or has an interest in, the draft order and unlikely to become aware of it by means of electronic publication, a site notice or by local advertisement, of—
  - (i) the address of the office of the initiating body where a copy of the draft order and statement may be obtained; and
  - (ii) the address to which representations may be sent.

(2) The initiating body must not make the order until after the expiry of 30 days from the last date on which a copy of the statement was publicised in accordance with this regulation or regulation 19.

(3) When the local planning authority prepare an environmental statement, they must send to the Welsh Ministers, within 14 days after sending the statement to the consultees, one copy of each of any relevant screening opinion, statement of reasons and draft order, in electronic and paper format unless otherwise agreed in writing.”

12. Regulation 19 is to be read as if—

- (a) paragraph (1) were omitted;
- (b) paragraph (2) read—

“(2) The initiating body must publish by local advertisement a notice stating—

- (a) the name and address of the initiating body;
- (b) the address or location and the nature of the development referred to in the proposed section 97 order or section 102 order;
- (c) that a copy of the draft order and of any plan or other documents accompanying it together with a copy of the environmental statement may be inspected by members of the public at all reasonable hours;
- (d) the address of the office of the initiating body at which those documents may be inspected, and the latest date on which they will be available for inspection (being a date not less than 30 days from the date on which the notice is published);
- (e) details of a website maintained by or on behalf of the relevant planning authority on which further information or any other information may be



- inspected and the latest date on which they are available for access (being a date not less than 30 days from the date on which the notice is published);
- (f) an address (whether or not the same as that given under sub-paragraph (d)) of the office of the initiating body 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; and
  - (i) that any person wishing to make representations about the order should make them before the date specified in accordance with sub-paragraph (d), to the initiating body.”;
- (c) paragraph (3) were omitted;
  - (d) in paragraph (4), “applicant” read “initiating body”; and
  - (e) paragraphs (6) to (8) were omitted.
- 13.** Regulation 20 is to be read as if it provided—
- “20. Where a local planning authority submits a section 97 order or a section 102 order to the Welsh Ministers for confirmation, the authority must also submit one copy of any environmental statement and any further information.”
- 14.** Regulation 22 is to be read as if it provided—
- “22.—(1) Where the initiating body is the local planning authority, they must ensure that a reasonable number of copies of the statement referred to as the environmental statement prepared in relation to development in relation to which the authority propose to make a section 97 order or section 102 order are available at—
- (a) their principal office during normal office hours; and
  - (b) at such other places within their area as they consider appropriate.
- (2) Where the initiating body is the Welsh Ministers, they must send to the local planning authority who would be responsible for determining an application for planning permission in respect of the development covered by the proposed section 97 order or section 102 order, a copy of the environmental statement prepared in relation to the proposed order.
- (3) When the local planning authority receive a copy of an environmental statement pursuant to paragraph (2), they must ensure that a reasonable number of copies of the statement are available at—
- (a) their principal office during normal office hours; and
  - (b) at such other places within their area as they consider appropriate.”
- 15.** Regulation 24 must be read as if—
- (a) paragraph (1) read—

“(1) Where—

    - (a) an environmental statement has been prepared; and a section 97 order or section 102 order is submitted to the Welsh Ministers for confirmation; and
    - (b) the Welsh Ministers consider that it is necessary for the statement to contain additional information directly relevant to reaching a reasoned conclusion on the likely significant effects of the development in order to be an environmental statement,

the Welsh Ministers must notify the relevant planning authority; and that authority must ensure that the additional information is provided; and

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

(b) paragraph (3) read—

“(3) The initiating body must publish by local advertisement a notice stating—

- (a) the name and address of the relevant planning authority;
- (b) the address or location and the nature of the development referred to in the proposed section 97 order or section 102 order;
- (c) that further information is available in relation to an environmental statement which has already been provided;
- (d) that a copy of the further information may be inspected by members of the public at all reasonable hours;
- (e) the address of the office of the initiating body at which the further information may be inspected, and the latest date on which it is available for inspection (being a date not less than 30 days from the date on which the notice is published);
- (f) details of a website maintained by or on behalf of the authority on which the other information may be inspected and the latest date on which it is available for access (being a date not less than 30 days from the date on which the notice is published);
- (g) the address (whether or not the same as that given under sub-paragraph (e)) of the office of the initiating body at which copies of the further information may be obtained;
- (h) that copies may be obtained there so long as stocks last;
- (i) if a charge is to be made for a copy, the amount of the charge;
- (j) that any person wishing to make representations about the further information should make them to the authority before the latest date specified in accordance with sub-paragraphs (e) and (f);
- (k) the address to which representations should be sent.”;

(c) paragraph (4) read—

“(4) The local planning authority must send a copy of the further information to each person to whom, in accordance with these Regulations, the statement to which it relates was sent, and to the Welsh Ministers.”;

(d) paragraphs (5) and (6) were omitted;

(e) paragraph (7) read—

“(7) Where information is provided under paragraph (1) or any other information is provided the Welsh Ministers must not confirm the section 97 order or section 102 order before the expiry of 30 days after the latest of—

- (a) the date on which the further information was sent to all persons to whom the statement to which it relates was sent;
- (b) the date that notice of it was published in a local newspaper; or
- (c) the date that notice of it was published on a website.”;

(f) in paragraph (8)—

(i) “The applicant or appellant who provides” read “The local planning authority providing”; and

(ii) in sub-paragraph (a), after “number of copies of the” and before “information”, it read “further”.

16. Regulation 25(1) is to be read as if—

- (a) “an application or appeal” read “whether to make or confirm a section 97 or section 102 order”; and
- (b) “submitted” read “prepared”.

17. Regulation 27 is to be read as if it read—

“27.—(1) Each local planning authority must keep a record containing a copy of every section 97 order and section 102 order relating to their area, together with a statement of the reasons for making the order; and the authority must take steps to secure that there is also placed on that record a copy of any relevant—

- (a) screening opinion;
- (b) screening direction;
- (c) scoping opinion;
- (d) direction under regulation 5(4) or (5);
- (e) statement referred to as the environmental statement, including any further information;
- (f) statement of reasons accompanying any of the above.

(2) Where the local planning authority adopt a screening opinion or scoping opinion, or receive a copy of a screening direction or scoping direction before a section 97 order or a section 102 order is made, the authority must take steps to secure that a copy of the opinion or direction and any accompanying statement of reasons is made available for public inspection at all reasonable hours at the place where the record 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 record.”

18. Regulation 28 is to be read as if paragraph (1) read—

“(1) Where an initiating body makes a section 97 or section 102 order granting permission for EIA development, they must prepare a statement setting out the information specified in paragraph (2).”

19. Regulation 29 is to be read as if it provided—

“29.—(1) In this regulation, “decision” (*penderfyniad* means, in relation to an order which takes effect under section 97(7) of the 1990 Act, the decision to make the order and otherwise, the decision to confirm the section 97 order or the section 102 order.

(2) Where a section 97 order or a section 102 order permitting or requiring EIA development takes effect, the Welsh Ministers must—

- (a) notify the relevant planning authority when the order is made or confirmed; and
- (b) other than in relation to section 97 orders which take effect without being confirmed by the Welsh Ministers(62), provide the authority with a statement containing the information in paragraph (3)(c).

(3) Where a section 97 order or a section 102 order permitting or requiring EIA development takes effect, the relevant planning authority must—

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(62) See section 99(7) of the 1990 Act in relation to orders confirmed by the Welsh Ministers.

- (a) inform the public of the decision, by local advertisement, or by such other means as are reasonable in the circumstances; and
- (b) make available for public inspection at the place where the record of section 97 orders and section 102 orders 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 permitted or required by the order; and
  - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.”

**20.** Regulation 56 is to be read as if—

- (a) “decision” has the same meaning as in regulation 29 as modified by paragraph 19;
- (b) in paragraph (1)(a) read—
  - “(a) it comes to the attention of the Welsh Ministers that EIA development proposed to be carried out in Wales, which an initiating body proposes to require or permit by a section 97 order or a section 102 order is likely to have significant effects on the environment in another EEA State; or”;
- (c) in paragraphs (3) and (6), instead of “application” it read “proposed section 97 order or section 102 order”.

## SCHEDULE 7

Regulation 41

### Functions under Section 141 of the 1990 Act

1. In a case to which this Schedule has effect, these Regulations apply subject to the following modifications.
2. Regulations 3, 7(2), 8 to 13, 18 and 21 do not apply.
3. In this Schedule and in the application of other regulations by this Schedule, references to—
  - (a) the “applicant” (“*y ceisydd*”) are to—
    - (i) the applicant for planning permission which has previously been determined;
    - (ii) the mineral planning authority in the case of an order under paragraph 1 of Schedule 9 to the 1990 Act;
    - (iii) the initiating body in respect of a section 97 or 102 order; or
    - (iv) a person who may apply for planning permission if the Welsh Ministers exercised their functions under section 141(3) of the 1990 Act;
  - (b) the “application” (“*y cais*”) are to—
    - (i) the proposal to grant or modify planning permission;
    - (ii) the proposal for a section 97 or section 102 order;
    - (iii) the application for planning permission which would be required for the development in question following any direction under section 141(3) of the 1990 Act.

- 4.—(1) Where, on consideration of a purchase notice it appears to the Welsh Ministers that—
- (a) the relevant application is, or would be, a Schedule 1 application or a Schedule 2 application; and
  - (b) the development in question—
    - (i) has not been the subject of a screening opinion or screening direction; or
    - (ii) has been the subject of a screening opinion or direction before planning permission was granted or modified to the effect that it is not EIA development; and
  - (c) the relevant 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 7 apply as if the request for confirmation of the purchase notice were a request made by the applicant pursuant to regulation 6(8).
- (2) Where regulation 7(3) applies by virtue of paragraph (1), the Welsh Ministers must, where and insofar as necessary to ensure that the applicant has provided, in the case of—
- (a) applications where no screening opinion or direction has been made, the information referred to in regulation 6(2); and
  - (b) other applications, the information referred to in regulation 6(3),
- make a request for additional information before issuing a screening direction.
5. 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 applicant as an environmental statement for the purposes of these Regulations, they must—
- (a) notify the applicant that the submission of an environmental statement is required; and
  - (b) send a copy of that notification to the relevant planning authority (if they are not the applicant).
- 6.—(1) Where the applicant proposes to submit an environmental statement, these Regulations apply to the applicant and relevant application—
- (a) as they apply to appellants and appeals, in the cases of proposed actions under section 141 of the 1990 Act—
    - (i) to grant planning permission;
    - (ii) to revoke or amend the conditions attached to a planning permission;
    - (iii) to direct that, if an application for planning permission were made, it must be granted; and
  - (b) as they apply to the initiating body and a proposed section 97 order or a proposed section 102 order, in the cases of proposed actions under section 141 of the 1990 Act—
    - (i) to revoke or amend conditions attaching to such an order;
    - (ii) to amend such an order.
- (2) Where the applicant proposes to submit an environmental statement the applicant must comply with the provisions of article 12(7A)(63) of the 2012 Order (publicity for applications for planning permission) as if the environmental statement had been submitted in relation to a planning application falling within article 12(2) of the 2012 Order and as if, in article 12(7A) to the 2012 Order the references to an application for planning permission were to a proposal to act under section 141(2) or (3) of the 1990 Act.

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(63) Article 12(7A) is inserted in the 2012 Order by paragraph 1(3)(h) of Schedule 9 to these Regulations.

(3) 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.

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

(5) If the applicant does not write in accordance with paragraph (4), at the end of the 21 days the Welsh Ministers must not take action under section 141(2) or (3) of the 1990 Act.

7. Where—

- (a) a notification has been given under paragraph 6(3), and
- (b) the applicant does not submit an environmental statement and comply with regulation 19(6),

the Welsh Ministers must determine the matter only by confirming or refusing to confirm the purchase notice.

8. Where it appears to the Welsh Ministers that the environmental information already before them—

- (a) is adequate to assess the environmental effects of the development which is the subject of the proposed action under section 141(2) or (3) of the 1990 Act, they must take that information into consideration in their decision;
- (b) is not adequate to assess the environmental effects of the development, they must serve a notice seeking further information in accordance with regulation 24(1); and

regulations 14 to 17 and 19 to 28 of these Regulations apply to the applicant and application—

- (i) as they apply to appellants and appeals in the case of—
  - (aa) a proposal to grant planning permission;
  - (bb) a proposal to revoke or amend the conditions attached to a planning permission; or
  - (cc) a proposal to direct that, if an application for planning permission were made, it must be granted; and
- (ii) as they apply to the initiating body and a proposed section 97 order or a proposed section 102 order in the case of—
  - (aa) a proposal to revoke or amend conditions attaching to such an order; or
  - (bb) a proposal to amend such an order; and
- (iii) as if references to the “relevant planning authority” were to the local planning authority who would determine any application for planning permission for the development in question were such an application to be submitted.

## SCHEDULE 8

Regulation 55(2)

### ROMP Applications

#### **Modification of provisions on prohibition of granting planning permission or subsequent consent**

1. Regulation 3 (prohibition on granting planning permission or subsequent consent without consideration of environmental information) is to be read as if, after “for EIA development” it read “pursuant to a ROMP application”<sup>(64)</sup>.

#### **Modification of provisions on application to local planning authority without an environmental statement**

2. In the case of a ROMP application, regulation 11(4) (application made to a local planning authority without an environmental statement) is to be read as if—

- (a) “21 days” read “6 weeks”; and
- (b) after “the notification”, it read “, or within such other period as may be agreed with the authority in writing”.

#### **Disapplication of regulations and modifications of provisions on application referred to or appealed to the Welsh Ministers without an environmental statement**

3.—(1) In the case of a ROMP application, regulations 11(6) and (8), 12(7) and (8), 13(8) and (9) and 61 do not apply.

(2) In the case of a ROMP application, regulation 12(6) (application referred to the Welsh Ministers without an environmental statement) and regulation 13(7) (appeal to the Welsh Ministers without an environmental statement) are to be read as if—

- (a) “21 days” read “6 weeks”; and
- (b) after “the notification” they read “, or within such other period as may be agreed with the Welsh Ministers in writing”.

#### **Substitution of references to section 78 of the 1990 Act right of appeal and modification of provisions on appeal to the Welsh Ministers without an environmental statement**

4.—(1) In the case of a ROMP application, in regulations 13(1) and 20(1)(b), for the references to “section 78 of the 1990 Act (right to appeal against planning decisions and failure to take such decisions)” read—

“paragraph 5(2) of Schedule 2 to the 1991 Act, paragraph 11(1) of Schedule 13 to the 1995 Act or paragraph 9(1) of Schedule 14 to the 1995 Act (right of appeal)”.

(2) In the case of a ROMP application, read regulation 13(2) (appeal to the Welsh Ministers without an environmental statement) as if “, except by refusing planning permission or subsequent consent,” were omitted.

<sup>(64)</sup> For the meaning of “ROMP” and “ROMP application” see regulation 55(1).

## **Modification of provisions on preparation, publicity and procedures on submission of environmental statements**

5.—(1) In the case of a ROMP application, in regulations 14(10) and 15(9), for the words “an application for planning permission or a subsequent application for” read “a ROMP application which relates to another planning permission which authorises”.

(2) In the case of a ROMP application, in regulation 18 (procedure where an environmental statement is submitted to a local planning authority) for paragraph (4) read—

“(4) 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 ROMP application under paragraph—

(a) 2(2) of Schedule 2 to the 1991 Act, and

(b) 6(1) of Schedule 14 to the 1995 Act(65),

as they apply to a planning application falling within paragraph (3A)(66) of article 12 of the 2012 Order except that for the references in the notice in Schedule 3 to the 2012 Order to “planning permission” there is substituted “determination of the conditions to which a planning permission is to be subject” and that the notice must refer to the relevant provisions of the 1991 Act or 1995 Act pursuant to which the application is made.”

(3) In the case of a ROMP application, in regulation 19 (publicity where an environmental statement is submitted after the planning application)—

(a) in paragraph (2)(a) for the words “that an application is being made for planning permission or subsequent consent” read—

“that an application is being made for determination of the conditions to which a planning permission is to be subject, the relevant provisions of the 1991 Act or 1995 Act pursuant to which the application is made”;

(b) for paragraph (7) read—

“(7) Where an applicant indicates that the applicant proposes to provide such a statement and in such circumstances as are mentioned in paragraph (1), the relevant mineral planning authority, the Welsh Ministers or the inspector, as the case may be, must suspend consideration of the application or appeal until the date specified by the authority or the Welsh Ministers for submission of the environmental statement and compliance with paragraph (6); and must not determine the application or appeal during the period of 30 days beginning with the last date on which the statement and the other documents mentioned in paragraph (6) are published in accordance with this regulation.”

(4) In the case of a ROMP application, in regulation 20(1) (provision of copies of environmental statements and further information for the Welsh Ministers on referral or appeal)—

(a) in sub-paragraph (a) for “section 77 of the 1990 Act (reference of applications to Secretary of State)” read “paragraph 7(1) of Schedule 2 to the 1991 Act, paragraph 13(1) of Schedule 13 to the 1995 Act or paragraph 8(1) of Schedule 14 to the 1995 Act”; and

(b) in sub-paragraph (b), for “section 78 of the 1990 Act (right to appeal against planning decisions and failure to take such decisions)”, read “paragraph 5(2) of Schedule 2 to the 1992 Act, paragraph 11(1) of Schedule 13 to the 1995 Act or paragraph 9(1) of Schedule 14 to the 1995 Act (right of appeal)”.

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(65) The provisions of the 2012 Order apply to applications under paragraph 9(1) of Schedule 13 to the 1995 Act by virtue of paragraph 9(5) of that Schedule.

(66) Paragraph (3A) is inserted in the 2012 Order by paragraph 1(3)(c) of Schedule 9 to these Regulations.



(5) In the case of a ROMP application, in regulation 22 (availability of copies of environmental statements) after “the 2012 Order” read “(as applied by regulation 18(5) or by paragraph 9(5) of Schedule 13 to the 1995 Act),”.

(6) In the case of a ROMP application, in regulation 24 (further information and evidence in respect of environmental statements)—

(a) in paragraph (3)(a) for the words “applicant for planning permission or subsequent consent or the appellant (as the case may be)” read—

“person who has applied for or who has appealed in relation to the determination of the conditions to which the planning permission is to be subject, the relevant provisions of the 1991 Act or 1995 Act pursuant to which the application is made”;

(b) in paragraph (7)(a) after the words “application or appeal” read “until the date they specify for submission of the further information”.

(7) In regulation 25 (consideration of whether planning permission should be granted), in paragraph (1)(d) read as if “if planning permission or subsequent consent is to be granted” were omitted.

### **Modification of provisions on application to the High Court and giving of directions**

6.—(1) In the case of a ROMP application, for regulation 59 (application to the High Court) read—

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

59. For the purposes of Part 12 of the 1990 Act (validity of certain decisions), the reference in section 288 of the 1990 Act, as applied by paragraph 9(3) of Schedule 2 to the 1991 Act, paragraph 16(4) of Schedule 13 to the 1995 Act or paragraph 9(4) of Schedule 14 to the 1995 Act, to action of the Welsh Ministers not being within the powers of the 1990 Act must be taken to extend to the determination of a ROMP application by the Welsh Ministers in contravention of regulation 3.”

(2) The direction making power in article 18(2) of the 2012 Order applies to ROMP development as it applies to development in respect of which a planning application is made.

### **Suspension of minerals development**

7.—(1) Where the authority, the Welsh Ministers or an inspector are dealing with a ROMP application or an appeal arising from a ROMP application and notify the applicant or appellant, as the case may be, that—

(a) the submission of an environmental statement is required under regulation 11(1), 12(3) or 13(5), then such notification must specify the period within which the environmental statement and compliance with regulation 19(6) are required; or

(b) a statement should contain additional information under regulation 24(1), then such notification must specify the period within which that information is to be provided.

(2) Subject to paragraph (3), the planning permission to which the ROMP application relates may only authorise any minerals development (unless the Welsh Ministers have made a screening direction to the effect that ROMP development is not EIA development) if the applicant or the appellant has—

(a) written to the relevant mineral planning authority or Welsh Ministers within the 6 week or other period agreed pursuant to regulations 11(3) and 11(4), 12(4) and 12(6) or 13(7);

- (b) submitted an environmental statement and complied with regulation 19(6) within the period specified by the authority or the Welsh Ministers in accordance with paragraph (1) or within such extended period as is agreed in writing;
  - (c) provided additional information within the period specified by the authority, the Welsh Ministers or an inspector in accordance with paragraph (1) or within such extended period as is agreed in writing; or
  - (d) where a notification under regulation 6(5), 7(3), 14(3) or 15(3) has been received, provided the additional information requested within 21 days beginning with the date of the notification, or within such extended period as may be agreed in writing.
- (3) Where paragraph (2) applies, the planning permission may not authorise any minerals development from the end of—
- (a) the relevant period specified in or agreed pursuant to regulations 11(3) and 11(4), 12(4) and 12(6) or 13(7); and
  - (b) the period specified or agreed in writing as referred to in paragraph (2)(b), (c), and (d),
- until the applicant has complied with all of the provisions referred to in paragraph (2) which are relevant to the application or appeal in question.
- (4) Particulars of the suspension of minerals development and the date when that suspension ends must be entered in the appropriate part of the register(67) as soon as reasonably practicable.
- (5) Paragraph (2) does not affect any minerals development carried out under the planning permission before the date of suspension of minerals development.
- (6) For the purposes of paragraphs (2) to (5), “minerals development” (*“datblygiad mwynau”*) means development consisting of the winning and working of minerals, or involving the depositing of mineral waste.

### **Determination of conditions and right of appeal on non-determination**

8.—(1) Where it falls to a mineral planning authority to determine a Schedule 1 or a Schedule 2 application, paragraph 2(6)(b) of Schedule 2 to the 1991 Act, paragraph 9(9) of Schedule 13 to the 1995 Act or paragraph 6(8) of Schedule 14 to the 1995 Act do not have effect so as to treat the authority as having determined the conditions to which any relevant planning permission is to be subject unless either—

- (a) the authority has adopted a screening opinion; or
- (b) the Welsh Ministers have made a screening direction to the effect that the ROMP development in question is not EIA development;

(2) Where it falls to a mineral planning authority or the Welsh Ministers to determine a Schedule 1 or a Schedule 2 application—

- (a) section 69 of the 1990 Act (register of applications, etc), and any provisions of the 2012 Order made by virtue of that section, have effect with any necessary amendments as if references to applications for planning permission included ROMP applications under paragraph 9(1) of Schedule 13 to the 1995 Act and paragraph 6(1) of Schedule 14 to the 1995 Act(68); and
- (b) where the authority is not the authority required to keep the register, the authority must provide the authority required to keep it with such information and documents as that authority requires to comply with section 69 of the 1990 Act as applied by paragraph (a), with regulation 27 as applied by regulation 55, and with paragraph 7(4) of this Schedule.

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(67) See paragraph 8(2) of this Schedule.

(68) These provisions apply to applications under paragraph 2(2) of Schedule 2 to the 1991 Act as they are applied by paragraph 9 of Schedule 2 to the 1991 Act.

(3) Where it falls to the mineral planning authority or the Welsh Ministers to determine an EIA application made under paragraph 2(2) of Schedule 2 to the 1991 Act, paragraph 4(4) of that Schedule does not apply.

(4) Where it falls to the mineral planning authority to determine an EIA application, the authority must give notice of their determination of the ROMP application within 16 weeks beginning with the date of receipt by the authority of the ROMP application or such extended period as may be agreed in writing between the applicant and the authority.

(5) For the purposes of paragraph (4), a ROMP application is received by the mineral planning authority when they receive—

- (a) a document referred to by the applicant as an environmental statement for the purposes of these Regulations;
- (b) any documents required to accompany that statement; and
- (c) any additional information which the authority has notified the applicant that the environmental statement should contain.

(6) Where paragraph (1) applies—

- (a) paragraph 5(2) of Schedule 2 to the 1991 Act, paragraph 11(1) of Schedule 13 to the 1995 Act and paragraph 9(1) of Schedule 14 to the 1995 Act (right of appeal) have effect as if there were also a right of appeal to the Welsh Ministers where the mineral planning authority have not given notice of their determination of the ROMP application in accordance with paragraph (4); and
- (b) paragraph 5(5) of Schedule 2 to the 1991 Act, paragraph 11(2) of Schedule 13 to the 1995 Act and paragraph 9(2) of Schedule 14 to the 1995 Act (right of appeal) have effect as if they also provide for notice of appeal to be made within 6 months from the expiry of the 16 week or other period agreed pursuant to paragraph (4).

(7) In determining for the purposes of—

- (a) paragraphs 2(6)(b) of Schedule 2 to the 1991 Act, 9(9) of Schedule 13 to the 1995 Act and 6(8) of Schedule 14 to the 1995 Act (determination of conditions); or
- (b) paragraph 5(5) of Schedule 2 to the 1991 Act, paragraph 11(2) of Schedule 13 to the 1995 Act and paragraph 9(2) of Schedule 14 to the 1995 Act (right of appeal) as applied by paragraph 8(6)(b) of this Schedule,

the time which has elapsed without the mineral planning authority giving the applicant notice of their determination in a case where the authority have notified an applicant in accordance with regulation 11(1) that the submission of an environmental statement is required and the Welsh Ministers have given a screening direction in relation to the ROMP development in question no account may be taken of any period before the issue of the direction.

### **ROMP application by a mineral planning authority**

9.—(1) Where a mineral planning authority propose to make or makes a ROMP application which is a Schedule 1 or a Schedule 2 application to the Welsh Ministers under regulation 11 (other consents) of the General Regulations<sup>(69)</sup>, these Regulations apply to that application or proposed application as they apply to a ROMP application referred to the Welsh Ministers under paragraph 7(1) of Schedule 2 to the 1991 Act, paragraph 13(1) of Schedule 13 to the 1995 Act or paragraph 8(1) of Schedule 14 to the 1995 Act (reference of applications to the Welsh Ministers) subject to the following modifications—

- (a) subject to paragraph (2), regulations 6 to 11, 13, 14, 15, 18 (except for the purposes of regulations 21(3) and (4)), 20 and 29(1) do not apply;

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<sup>(69)</sup> Regulation 11 was amended by S.I. 1999/1810 and S.I. 1999/1892.

- (b) in regulation 5 (general provisions relating to screening), paragraphs (4) and (5) do not apply;
  - (c) regulation 12(3) (application referred to the Welsh Ministers without an environmental statement), applies as if “and must send a copy of that notification to the relevant planning authority” were omitted;
  - (d) in regulation 16 (procedure to facilitate preparation of environmental statements)—
    - (i) in paragraph (3)(b) “11(4)(a), 12(6) or 13(7)” read “12(6)”;
    - (ii) read paragraph (4) as if “the relevant planning authority and” and “authority or” in both places where it occurs were omitted;
  - (e) in regulation 19(2) (publicity where an environmental statement is submitted after the planning application)—
    - (i) sub-paragraph (a) read as if “and the name and address of the relevant planning authority” were omitted;
    - (ii) read as if sub-paragraph (b) provided—
      - “(b) the date on which the application was made and that it has been made to the Welsh Ministers under regulation 11 of the General Regulations;”;
  - (f) read regulation 21(2) (procedure where an environmental statement is submitted to the Welsh Ministers), as if “and to the relevant planning authority” were omitted;
  - (g) in regulation 24(3) (further information and evidence in respect of environmental statements)—
    - (i) read sub-paragraph (a) as if “and the name and address of the relevant planning authority” were omitted;
    - (ii) read sub-paragraph (b) as if it provided—
      - “(b) the date on which the application was made and that it has been made to the Welsh Ministers under regulation 11 of the General Regulations;”;
      - and
  - (h) regulations 25 (consideration of whether planning permission should be granted), 27 (availability of opinions, directions etc. for inspection), 28(1) (information to accompany decisions) and 29(2) (duties to inform the public and the Welsh Ministers of final decisions) apply as if the references to a relevant planning authority were references to a mineral planning authority.
- (2) A mineral planning authority minded to make a ROMP application to the Welsh Ministers under regulation 11 of the General Regulations may request the Welsh Ministers to make a screening direction, and paragraphs (3) to (6) of regulation 7 apply to such a request as they apply to a request made pursuant to regulation 6(8) except as if in paragraph (5) “, and may request the relevant planning authority to provide such information as they can on any of those points” were omitted.
- (3) A request under paragraph (2) must be accompanied by—
- (a) a plan sufficient to identify the land;
  - (b) a description of the nature and purpose of the ROMP development, including in particular—
    - (i) a description of the physical characteristics of the whole development and, where relevant, of demolition works;
    - (ii) a description of the location of the development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
  - (c) a description of the aspects of the environment likely to be significantly affected by the development;

- (d) a description of any likely significant effects, to the extent of the information available on those effects, of the proposed development on the environment resulting from—
    - (i) the expected residues and emissions and the production of waste, where relevant; and
    - (ii) the use of natural resources, in particular soil, land, water and biodiversity; and
  - (e) such other information as the authority may wish to provide including any features of the proposed development or any measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.
- (4) An authority making a request under paragraph (2) must send to the Welsh Ministers any additional information they may request to enable them to make a direction.

### **ROMP applications: duty to make a prohibition order after two years suspension of permission**

- 10.—(1) This paragraph applies if, in relation to a minerals development—
- (a) a period of 2 years beginning with the suspension date has expired, and
  - (b) the steps specified in paragraph 7(2) have yet to be taken.
- (2) The “suspension date” is the date on which the suspension of the power to authorise minerals development (within the meaning of paragraph 7(6)) begins.
- (3) Paragraph 3 of Schedule 9 to the 1990 Act (prohibition of resumption of mineral working) (70) has effect in relation to any part of a site as it has effect in relation to the whole site.
- (4) Sub-paragraph (1) of that paragraph has effect as if from “the mineral planning authority may by order” to the end read—
- “the mineral planning authority—
- (i) must by order prohibit the resumption of the winning and working or the depositing; and
  - (ii) may in the order impose, in relation to the site, any such requirement as is specified in sub-paragraph (3).”
- (5) In sub-paragraph (2)(a) and (b) of that paragraph, references to winning and working or depositing are to be read as references to winning and working or depositing for which permission is not suspended by virtue of paragraph 7(3).
- (6) Paragraph 4(7) of Schedule 9 to the 1990 Act has effect as if “have effect” read “authorise that development”.

## SCHEDULE 9

Regulation 64

### Amendments to other instruments

### **The Town and Country Planning (Development Management Procedure) (Wales) Order 2012**

- 1.—(1) The 2012 Order is amended in accordance with this paragraph.
- (2) In article 2(1)—
- (a) omit the definitions of “EIA application” (“*cais AEA*”), “EIA development” (“*datblygiad AEA*”), “environmental information” (“*gwybodaeth amgylcheddol*”) and “environmental statement” (“*datganiad amgylcheddol*”);

(70) Paragraph 3 was amended by the 1991 Act, Schedule 1, paragraph 15(6).

- (b) in the relevant places, insert—
- (i) “any other information” (“*unrhyw wybodaeth arall*”) has the meaning in the EIA Regulations;
  - (ii) “EIA application” (“*cais AEA*”) has the meaning in the EIA Regulations;
  - (iii) “EIA development” (“*datblygiad AEA*”) has the meaning in the EIA Regulations;
  - (iv) “EIA Regulations” (“*Rheoliadau AEA*”) means the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017;
  - (v) “environmental information” (“*gwybodaeth amgylcheddol*”) has the meaning in the EIA Regulations;
  - (vi) “environmental statement” (“*datganiad amgylcheddol*”) has the meaning in the EIA Regulations;
  - (vii) “further information” (“*gwybodaeth bellach*”) has the meaning in the EIA Regulations;
  - (viii) “Schedule 1 development” (“*datblygiad Atodlen 1*”) and “Schedule 2 development” (“*datblygiad Atodlen 2*”) have the meanings in the EIA Regulations;
  - (ix) “scoping opinion” (“*barn gwmpasu*”) has the meaning in the EIA Regulations; and
  - (x) “scoping direction” (“*cyfarwyddyd cwmpasu*”) has the meaning in the EIA Regulations.

(3) In article 10(4), after “planning permission”, insert “other than EIA applications”.

(4) In article 12(71)—

- (a) in paragraph (2), for “In” substitute “Subject to paragraph (3A), in”;
- (b) omit paragraph (2)(a);
- (c) after paragraph (3), insert—
  - “(3A) In the case of an EIA application, the local planning authority must publicise the application in accordance with the requirements of paragraph (7A) and, where the environmental statement is submitted with the application, by giving requisite notice—
  - (a) by site display in at least one place on or near the land to which the application relates for not less than 30 days; and
  - (b) by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated.”;
- (d) in paragraph (4), for “paragraph (4A)” substitute “paragraph (3A) or (4A)”;
- (e) in paragraph (4A), for “(2)(a) or (c)”, substitute “(2)(c) or (3A)”;
- (f) in paragraph (5), after “paragraph (2),”, insert “paragraph (3A),”;
- (g) in paragraph (6), after “or (5)(a)”, insert “, or before the period of 30 days referred to in paragraph (3A)(a),”;
- (h) in paragraph (7), after “planning permission”, insert “other than EIA applications”; and
- (i) after paragraph (7) insert—
  - “(7A) The local planning authority must ensure it maintains a website for the purpose of publicising EIA applications and the following information must be published on the website—
  - (a) the address or location of the proposed development;

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(71) Article 12 has been amended by articles 2 and 5(a) of [S.I. 2015/1330 \(W. 123\)](#) and by articles 2 and 10(2) of [S.I. 2016/59 \(W. 29\)](#).

- (b) a description of the proposed development;
- (c) the fact that the development is subject to an environmental impact assessment procedure;
- (d) the environmental statement, any relevant scoping opinion or scoping direction and any further information or any other information;
- (e) in accordance with the Freedom of Information Act 2000 and the Data Protection Act 1998, the main reports and advice issued to the authority at the time the information is published (if any);
- (f) in accordance with the Environmental Information Regulations 2004<sup>(72)</sup>, information other than that required under any other sub-paragraph which is relevant to the decision and which only becomes available after the time the information required by this paragraph was first published;
- (g) where, when and the means by which the application and the environmental statement may be inspected;
- (h) how copies of the environmental statement may be obtained and the cost of such copies;
- (i) the date by which any representations about the application must be made, which must not be before the last day of the period of 30 days beginning with the last date on which the environmental statement is published either on the website, in accordance with paragraph (3A) or in accordance with regulation 19 of the EIA Regulations;
- (j) other details of the arrangements for public participation in the decision-making procedure including a description of the procedure for the publication of any additional information subsequently submitted by the applicant;
- (k) how representations may be made about the application;
- (l) details of the person or body responsible for taking the decision;
- (m) that, in the case of a householder application or a minor commercial application, in the event of an appeal that proceeds by way of the expedited procedure, any representations made about the application will be passed to the Welsh Ministers and there will be no opportunity to make further representations.”

(5) In article 14(4)(b), for “21 days” in both places it occurs, substitute “30 days in the case of an EIA application or 21 days in any other case”.

(6) In article 15A(2)<sup>(73)</sup>, after “21 days” insert “, or 30 days in the case of an EIA application, in either case”.

(7) In article 15C after “21 days” insert “, or 30 days in the case of an EIA application, in either case”.

(8) In article 16 after “14 days” in both places where it occurs, insert “, (or 30 days in the case of an EIA application),”.

(9) In article 18(2), for “the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016”, substitute “the EIA Regulations”.

(10) In article 21—

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<sup>(72)</sup> S.I. 2004/3391.

<sup>(73)</sup> Article 15A(2) was inserted by articles 2 and 7 of S.I. 2015/1330 (W. 123). It was further amended by articles 2 and 10(5) (b) of S.I. 2016/59 (W. 29).

- (a) in paragraph (1)(a), after “21 days”, insert “, or, in the case of an EIA application accompanied by an environmental statement 30 days, in either case”; and
  - (b) in paragraph (1)(c), after “14 days”, insert “, or, in the case of an EIA application accompanied by an environmental statement 30 days, in either case”.
- (11) In article 22—
- (a) in paragraph (6)(a), after “21 days” insert “or, in the case of an EIA application accompanied by an environmental statement 30 days, in either case”; and
  - (b) in paragraph (6)(c), after “14 days” insert “or, in the case of an EIA application accompanied by an environmental statement 30 days, in either case”.
- (12) Omit article 24(2).
- (13) In article 27—
- (a) in paragraph (5)(b), for “28 days”, insert “30 days”;
  - (b) in paragraph (6)(b)(iii) for “28 days” insert “30 days”;
  - (c) in paragraph (6)(c)(iii), for “28 days” insert “30 days”;
  - (d) in paragraph (7)(a) and (c) for “28 days” substitute “30 days; and
  - (e) in paragraph (13)(b), for “the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016”, substitute “the EIA Regulations”.
- (14) In Schedule 3, in the notice under article 12(3) of application for planning permission—
- (a) after “ARTICLE 12(3)” insert “OR 12(3A)”;
  - (b) after “until all reasonable hours until (f)...” insert “(fa)” and at the end of the notice after note (f) insert as note (fa)—
    - “(fa) details of the website on which the environmental statement and any other documents may be inspected”;
  - (c) after “at a charge of (h)\*...” insert “(ha)” and at the end of the notice after note (h) insert as note (ha)—
    - “(ha) the website where any other information received from the applicant in respect of the proposed development is published”; and
  - (d) in note (f) for “date”, substitute—
    - “date:
      - “(i) in the case of an EIA application, giving a period of 30 days beginning with the later of the date on which the notice is first displayed on or near the site, the date the notice is first published in a newspaper or the date the information required to be published on the website of the local planning authority pursuant to article 12(7) is so published; or
      - (ii) in any other case,”.

### **Developments of National Significance (Procedure) (Wales) Order 2016**

- 2.—(1) The 2016 Order is amended in accordance with this paragraph.
- (2) In article 2—
- (a) in the definition of “the EIA Regulations” (“*y Rheoliadau AEA*”), for “2016”, substitute “2017”; and
  - (b) in the relevant places, insert—
    - (i) ““EIA development” (“*datblygiad AEA*”) has the meaning in the EIA Regulations;”;



- (ii) ““Schedule 1 development” (*“datblygiad Atodlen 1”*) and “Schedule 2 development” (*“datblygiad Atodlen 2”*) have the meanings in the EIA Regulations;”;
  - (iii) ““scoping direction” (*“cyfarwyddyd cwmpasu”*) has the meaning in the EIA Regulations;”;
  - (iv) ““scoping opinion” (*“barn gwmpasu”*) has the meaning in the EIA Regulations;”.
- (3) In article 18—
- (a) after paragraph (3)(b), insert—
    - “(ba) in the case of an application accompanied by an environmental statement—
      - (i) the fact that the development is subject to an environmental impact assessment procedure;
      - (ii) the environmental statement, any relevant scoping direction, and any further information or any other information;
      - (iii) in accordance with the Freedom of Information Act 2000 and the Data Protection Act 1998, the main reports and advice issued to the Welsh Ministers at the time the information is published (if any);
      - (iv) in accordance with the Environmental Information Regulations 2004(74), information other than that required under any other subparagraph which is relevant to the decision and which only becomes available after the time the information required by this paragraph was first published;
      - (v) how copies of the environmental statement may be obtained and the cost of such copies;
      - (vi) other details of the arrangements for public participation in the decision-making procedure including a description of the procedure for the publication of any additional information subsequently submitted by the applicant;
      - (vii) details of the authority responsible for taking the decision;”;
    - (b) in paragraph (3)(c), after “received”, insert “which, in the case of an application accompanied by an environmental statement, must not be before the last day of the period of 30 days beginning on the latest date on which the application has been publicised in accordance with article 18(2), (3) or 19(2)”;
    - (c) in paragraph (4), in the appropriate place, insert—
      - ““further information” (*“gwybodaeth bellach”*) and “any other information” (*“unrhyw wybodaeth arall”*) have the same meanings as the EIA Regulations;”.
- (4) In article 19—
- (a) in paragraph (2), for “21 days” substitute “30 days, in the case of an application accompanied by an environmental statement, and 21 days in any other case”;
  - (b) in paragraph (5), for “21 days” substitute “21 or 30 days, as appropriate,”.
- (5) In article 22(4)(b), after “21 days” insert “, or in the case of an application accompanied by an environmental statement 30 days,”.
- (6) In article 23(2)(a), for “21 days”, substitute “30 days, in the case of an application accompanied by an environmental statement and 21 days in any other case, in either case”.
- (7) In article 29, omit paragraphs (4) and (5).

(74) S.I. 2004/3391.

- (8) In the form in Schedule 4—
- (a) after “+The application is accompanied by an Environmental Statement”, insert “+The proposed development is likely to have significant effects in another EEA State”;
  - (b) in note j)—
    - (i) for “21” substitute “30”; and
    - (ii) after “publication”, insert “, or in the case of an application which is not required to be accompanied by an environmental statement in accordance with the EIA Regulations, that period must be 21 days”.

## SCHEDULE 10

Regulation 66

### Consequential amendments

#### **The Town and Country Planning (General Permitted Development) Order 1995**

1.—(1) The Town and Country Planning (General Permitted Development) Order 1995<sup>(75)</sup> is amended as follows.

- (2) In article 3—
- (a) in paragraph (10), for “2016”, substitute “2017”; and
  - (b) in paragraphs (10) and (11)—
    - (i) for “regulation 4(8)” substitute “regulation 5(11)”; and
    - (ii) for “regulation 6(6)” substitute “regulation 7(6)”; and
    - (iii) for “regulation 4(4)” substitute “regulation 5(4)”.

#### **The Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999**

2.—(1) The Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999<sup>(76)</sup> are amended as follows.

- (2) In regulation 2(1), for the definition of “the 2016 EIA Regulations” substitute—
- ““the 2017 Regulations” means the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017;”.
- (3) In regulation 4(3)—
- (a) in sub-paragraph (b), for “regulation 6(6)” substitute “regulation 7(6)”; and
  - (b) for “2016” (in both places where it occurs) substitute “2017”.

#### **The Planning (National Security Directions and Appointed Representatives) (Wales) Regulations 2006**

3.—(1) The Planning (National Security Directions and Appointed Representatives) (Wales) Regulations 2006<sup>(77)</sup> are amended as follows.

- (2) In the definition of “EIA application” (“*cais Aseiad o'r Effaith Amgylcheddol*”) in regulation 6(8), for “2016”, substitute “2017”.

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<sup>(75)</sup> S.I. 1995/418 to which there are amendments not relevant to these Regulations.

<sup>(76)</sup> S.I. 1999/1672.

<sup>(77)</sup> S.I. 2006/1387 (W. 137).

## EXPLANATORY NOTE

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

These Regulations revoke and restate with amendments the provisions of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016<sup>(78)</sup> (“the 2016 Regulations”). The 2016 Regulations consolidated and updated earlier instruments which implemented Council Directive 85/337/EEC (“the 1985 Directive”) on the assessment of the effects of certain public and private projects on the environment<sup>(79)</sup> in relation to town and country planning in Wales.

The 1985 Directive has been replaced by Directive 2011/92/EU (“the Directive”) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment<sup>(80)</sup>. The Directive has been amended by EU Directive 2014/52/EU<sup>(81)</sup>.

The Regulations impose procedural requirements in relation to the granting of planning permission under the Town and Country Planning Act 1990<sup>(82)</sup>.

All development in Schedule 1 requires an environmental impact assessment (“EIA”). Development in column 1 of the table in Schedule 2 which is either to be carried out in a sensitive area or satisfies a threshold or criterion in column 2 requires an EIA if it is likely to have significant effects on the environment.

The main amendments to the 2016 Regulations are:

### *Environmental impact assessment*

Regulation 3 requires an EIA to be carried out before consent is given to development likely to have significant effects on the environment (“EIA development”).

New regulation 4 describes the environmental impact assessment process.

### *Screening*

The screening process is amended. Regulation 6(2) and (3) require certain information to be provided by the person seeking planning permission, taking into account the selection criteria in Schedule 3.

In accordance with regulation 5(8), when making a screening decision, the decision-maker must now take into account that information, the available results of other environmental assessments as well as the selection criteria in Schedule 3. Those selection criteria are amended.

When the decision-maker adopts a screening decision they must state the main reasons for the decision in addition to other new matters, in accordance with regulation 5(9).

Regulations 6(6) and 7(6) require screening decisions to be made at the latest within 90 days from the date of the submission of all the relevant information unless there are exceptional circumstances and regulation 7(7) applies.

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<sup>(78)</sup> S.I. 2016/58 (W. 28).

<sup>(79)</sup> O.J. No. L 175, 5.7.1985, p. 40. Council Directive 85/337/EEC was amended by Council Directive 97/11/EC, O.J. No. L 73, 14.3.1997, p. 5; Directive 2003/35/EC of the European Parliament and of the Council, O.J. No. L 156, 25.6.2003, p. 17; and Directive 2009/31/EC of the European Parliament and of the Council, O.J. No. L 140, 5.6.2009, p. 114. The 1985 Directive and the amending provisions of a subsequent Directive were codified in the Directive, O.J. No. L 26, 28.1.2012, p. 1.

<sup>(80)</sup> O.J. No. L 26, 28.1.2012, p. 1.

<sup>(81)</sup> O.J. No. L 124, 25.4.2014, p. 1.

<sup>(82)</sup> 1990 c. 8.

### *Scoping*

Regulation 14(2) makes changes to the nature of the information which a person must provide with a request for a scoping opinion. Paragraph (6) requires the body making the scoping decision to take additional information into account before adopting the scoping decision.

### *Environmental statements*

The information required to be included in an environmental statement has been expanded by regulation 17(3) and Schedule 4. Regulations 4(4) and 17(4) contain new requirements in relation to environmental statements.

### *The decision whether to grant planning permission*

Regulation 25 makes detailed provision as to the procedure that the decision-maker must follow when determining whether to grant planning permission for a development in relation to which an environmental statement has been submitted. Paragraph (2) contains a requirement for the decision-maker's conclusion on the significant effects of the development to be up-to-date at the time that it makes its decision whether to grant planning permission. Paragraph (4) details the matters the decision-maker must consider in relation to potential remedial action and monitoring measures.

Regulation 28 sets out the information which must be provided with a decision on whether to grant planning permission.

### *Publicity and consultation*

Regulation 19(2)(e) and amendments made to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012(83) by paragraph 1(3)(c) of Schedule 9 provide for a minimum public consultation period of 30 days.

Regulation 29(1)(d) makes provision for enhanced information to be provided to the public after a decision is made in relation to whether to grant planning permission for EIA development.

### *Penalties and enforcement*

Regulation 43 contains the duty on local planning authorities to have regard to the need to secure compliance with the requirements and objectives of the Directive in the exercise of their enforcement functions.

### *Other requirements*

Regulation 19 and amendments made to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 by paragraph 1(3)(h) of Schedule 9 require the environmental statement and other documents to be available electronically for inspection.

Regulation 26 is a requirement to coordinate, where appropriate, an EIA under these Regulations with any assessment under regulation 61 of the Conservation of Habitats and Species Regulations 2010(84).

Regulation 58 makes provision to secure that there is no conflict of interest and that there is an appropriate separation of functions when the decision-maker is also the body requiring planning permission. The specific provisions relating to development by a local planning authority have been removed.

Similar amendments have been made to the processes in Part 7 (Developments of National Significance), Part 9 (Restrictions on Grants of Permission), Part 10 (Unauthorised Development) and Part 11 (ROMP Applications).

A regulatory impact assessment has been prepared in relation to these Regulations. Copies may be obtained from Planning Division, The Welsh Government, Cathays Park, Cardiff, CF10 3NQ and on the website at <https://www.wales.gov.uk>.

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(83) S.I. 2010/801 (W. 110).

(84) S.I. 2010/490.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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