
WELSH STATUTORY INSTRUMENTS

2017 No. 567

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

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)(1);
- (b) the issue of a planning contravention notice under section 171C of the 1990 Act (power to require information about activities on land)(2);
- (c) the issue of a temporary stop notice under section 171E of the 1990 Act (temporary stop notice)(3);
- (d) the issue of a stop notice under section 183 of the 1990 Act (stop notices)(4);
- (e) the service of a breach of condition notice under section 187A of the 1990 Act (enforcement of conditions)(5); and
- (f) an application to the court for an injunction under section 187B of the 1990 Act (injunctions restraining breaches of planning control)(6);

“ground (a) appeal” (“*apêl sail (a)*”) means an appeal brought under section 174(2)(a) of the 1990 Act (appeal against enforcement notice)(7); 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.

(1) Section 172 was substituted by section 5 of the 1991 Act.
(2) Section 171C was inserted by section 1 of the 1991 Act and amended by article 5(a) of [S.I. 2004/3156 \(W. 273\)](#).
(3) Section 171E was inserted by section 52 of the Planning and Compulsory Purchase Act [2004 \(c. 5\)](#).
(4) Section 183 was substituted by section 9 of the 1991 Act.
(5) Section 187A was inserted by section 2 of the 1991 Act. There is a further amendment which is not relevant to Wales.
(6) Section 187B was inserted by section 3 of the 1991 Act.
(7) 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.

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

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).

(8) 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.

(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⁽⁹⁾, 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”.

⁽⁹⁾ See section 177(8) of the 1990 Act.