

## 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”(1).

#### **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.

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(1) 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(2),

as they apply to a planning application falling within paragraph (3A)(3) 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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(2) 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.

(3) 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);

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- (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<sup>(4)</sup> 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<sup>(5)</sup>; 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.

<sup>(4)</sup> See paragraph 8(2) of this Schedule.

<sup>(5)</sup> 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>(6)</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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(6) Regulation 11 was amended by S.I. 1999/1810 and S.I. 1999/1892.

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- (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) (7) 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”.

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