
WELSH STATUTORY INSTRUMENTS

2015 No. 1597

The Planning (Hazardous Substances) (Wales) Regulations 2015

PART 6

Policies and public consultation and participation

Policies

26.—(1) In preparing, reviewing or modifying any relevant policy, the Welsh Ministers must ensure that the following matters are taken into account—

- (a) the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment; and
- (b) the matters referred to in Article 13(2) of the Directive.

(2) In this regulation “relevant policy” (*“polisi perthnasol”*) means the Wales Spatial Plan; and any current national land-use planning, transport routes or fishery harbour policy where in the opinion of the Welsh Ministers that policy concerns matters affecting the risks or consequences of a major accident.

(3) Expressions appearing both in this regulation and in the Directive have the same meaning for the purposes of this regulation as they have for the purposes of the Directive.

Plans and programmes

27.—(1) Subject to paragraph (3), this regulation applies where a responsible authority proposes to prepare, review or modify a relevant plan or programme.

(2) Where this regulation applies, the responsible authority must—

- (a) take such measures as it considers appropriate to ensure that public consultees are given early and effective opportunities to participate in the preparation, modification or review of the relevant plan or programme; and
- (b) in doing so, take such measures as it considers appropriate to ensure that—
 - (i) public consultees are informed of any proposals to prepare, modify or review a relevant plan or programme;
 - (ii) relevant information about such proposals is made available to public consultees, including information about the right to participate in decision-making and about the authority to which comments or questions may be submitted;
 - (iii) public consultees are entitled to express comments and opinions when all options are open before decisions on the relevant plan and programme are made; and
 - (iv) any periods provided for public participation under this regulation allow public consultees sufficient time to prepare and participate in decision-making in relation to the relevant plan or programme;
- (c) take into account the results of the public participation in making those decisions; and

- (d) take such measures as it considers appropriate to inform the public consultees about the decisions taken and the reasons and considerations on which those decisions are based, including information about the public participation process.
- (3) This regulation does not apply to a relevant plan or programme in relation to which a public participation procedure is carried out under Part 3 of the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004⁽¹⁾.
- (4) In this regulation—
- “public consultees” (*“ymgyngoreion cyhoeddus”*) means persons of whom the responsible authority is aware, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the relevant plan or programme in question;
- “relevant plan or programme” (*“cynllun neu raglen berthnasol”*) means a general plan or programme relating to—
- (a) planning for new establishments pursuant to Article 13 of the Directive, or
- (b) new developments around establishments where the siting or developments may increase the risk or consequences of a major accident pursuant to Article 13 of the Directive; and
- “responsible authority” (*“awdurdod cyfrifol”*) means—
- (a) the authority by which or on whose behalf a relevant plan or programme is prepared; and
- (b) where, at any particular time, that authority ceases to be responsible, or solely responsible, for taking steps in relation to the plan or programme, the person who, at that time, is responsible (solely or jointly with the authority) for taking those steps.
- (5) This regulation does not apply to a Minister of the Crown (as defined in section 8(1) of the Ministers of the Crown Act 1975⁽²⁾) or a department of the Government of the United Kingdom.
- (6) This regulation applies to a relevant plan or programme relating to the whole or any part of Wales, but this is subject to paragraph (5).
- (7) Any steps taken before 4 September 2015 in relation to a relevant plan or programme may be treated as steps taken for the purposes of this regulation.

Other planning approvals for projects

- 28.**—(1) Subject to paragraph (4), this regulation applies where a consent, permission or other authorisation for a relevant project is sought from a competent authority.
- (2) A competent authority must, before deciding to give any land-use planning, transport route or fishery harbour consent, permission or other authorisation for a relevant project, take such measures as it considers appropriate to ensure that—
- (a) the public is informed by public notices or other appropriate means, including electronic communications where available, of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided—
- (i) the subject of the relevant project;
- (ii) where applicable, the fact that a project is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive;

(1) S.I. 2004/1656 (W. 170), amended by S.I. 2011/1043; there are other amending instruments but none is relevant.

(2) 1975 c. 26.

- (iii) details of the competent authority responsible for taking the decision, from which relevant information can be obtained and to which comments or questions can be submitted;
 - (iv) an indication of the times and places where, or means by which, the relevant information will be made available;
 - (v) details of the period for transmitting comments or questions; and
 - (vi) the nature of possible decisions or, where there is one, the draft decision;
- (b) the COMAH competent authority is consulted about the project;
 - (c) the main reports and advice issued to the competent authority at the time when the public concerned was informed pursuant to paragraph (2)(a) are made available to the public concerned at that time;
 - (d) the public concerned is entitled to express comments and opinions to the competent authority before a decision is taken; and
 - (e) the results of the consultations held pursuant to this regulation are taken into account in the taking of a decision.
- (3) After deciding whether to give any consent, permission or other authorisation for a relevant project, the competent authority must make available to the public—
- (a) the content of the decision and the reasons on which it is based, including any subsequent updates;
 - (b) the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision.
- (4) To the extent that the competent authority is already required by any enactment to take any of the actions set out in paragraphs (2) or (3) of this regulation, those paragraphs do not apply.
- (5) In this regulation—
- “competent authority” (“*awdurdod cymwys*”) means the Welsh Ministers, local authority or other authority with responsibility for deciding whether to give a consent, permission or other authorisation referred to in paragraph (1);
- “the public concerned” (“*y cyhoedd dan sylw*”) means persons, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the taking of a decision to give the consent, permission or other authorisation referred to in paragraph (1); and
- “relevant project” (“*prosiect perthnasol*”) means—
- (a) development falling within paragraphs (c), (ca) or (x) of Schedule 4 to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012⁽³⁾;
 - (b) works beyond the mean low water mark which are proposed in relation to a fishery harbour in Wales either—
 - (i) in an area which has been notified by the COMAH competent authority to the competent authority for the purposes of this paragraph and which are likely to result in a material increase in the number of persons living in, working in or visiting the notified area; or
 - (ii) where the siting or works may otherwise increase the risk or consequences of a major accident; or
 - (c) a new establishment.

(3) S.I. 2012/801 (W. 110), amended by S.I. 2014/469 and S.I. 2013/755 (W. 90). There are other amendments which are not relevant to this instrument.

- (6) In this regulation, a reference to giving consent, permission or other authorisation means—
- (a) granting planning permission on an application under Part 3 of the TCPA(4) (control over development);
 - (b) granting planning permission on an application under section 293A of that Act(5) (urgent Crown development)(6);
 - (c) granting planning permission, or upholding a decision of the local planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under section 78 of that Act (right to appeal against planning decisions)(7) in respect of such an application;
 - (d) granting planning permission under—
 - (i) section 141(2)(a) of that Act (action in relation to purchase notice); or
 - (ii) section 177(1)(a) of that Act (grant or modification of planning permission on appeals against enforcement notices);
 - (e) directing under subsection (1) or (2A) of section 90 of that Act (development with government authorisation) that planning permission is deemed to be granted;
 - (f) making—
 - (i) a local development order under section 61A of the TCPA(8);
 - (ii) a simplified planning zone under section 82 of that Act;
 - (iii) an order designating an enterprise zone under Schedule 32 to the Local Government, Planning and Land Act 1980(9);
 - (iv) an order under section 102 of the TCPA (orders requiring discontinuance of use or alteration or removal of buildings or works)(10), including an order made under that section by virtue of section 104 of that Act (powers in relation to section 102 orders) which grants planning permission, or confirming any such order under section 103 of that Act (confirmation of section 102 orders);
 - (v) an order under paragraph 1 of Schedule 9 to that Act (order requiring discontinuance of mineral working)(11), including an order made under that paragraph by virtue of paragraph 11 of that Schedule to that Act (powers in relation to orders under Schedule 9) which grants planning permission;
 - (vi) an order under section 14(1) (Ministers’ powers, on application of harbour authorities, or others, to make orders for securing harbour efficiency, etc.) or section 16(1) or (2) (Ministers’ powers, on application of intending undertakers, or

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- (4) 1990 c. 8. The functions of the Ministers of the Crown under the TCPA except (a) section 90(2), (b) the functions of the Ministers of the Crown other than the Secretary of State for Wales under sections 90(1), 101 and Schedule 8, 170(12), 238(1)(a), 239(1)(a), 263(3) and (4), 266, 268, 279(5) and (6), 305, 325(9) and 336(3); (c) the functions of the Secretary of State for Trade and Industry under section 272(5) and (6); and (d) the Treasury functions under sections 293(3) and 336(2) were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as amended by the National Assembly for Wales (Transfer of Functions) Order (S.I. 2000/253). There are other limitations on that transfer which are not relevant to these Regulations. Those functions were subsequently transferred to the Welsh Ministers by section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.
- (5) Section 293A was inserted by section 82(1) of the [Planning and Compulsory Purchase Act 2004](#) (“the 2004 Act”) (c. 5). 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 to an enactment amended by this Act must be taken to be a reference to the enactment as so amended.
- (6) Section 293A was inserted by section 82(1) of the 2004 Act.
- (7) Section 78 was amended by section 17(2) of [Planning and Compensation Act 1991](#) (c. 34), sections 40(2)(e) and 43(2) of the 2004 Act and paragraphs 1 and 3 of Schedule 10 and paragraphs 1 and 2 of Schedule 11 to the [Planning Act 2008](#) (c. 9).
- (8) Section 61A was inserted by section 40(1) of the 2004 Act and has been amended by sections 188 and 238 of, and Schedule 13 to the [Planning Act 2008](#).
- (9) [1980 c. 65](#).
- (10) Section 102 was amended by paragraph 6 of Schedule 1 and paragraph 21 of Schedule 7 to the [Planning and Compensation Act 1991](#) (c. 34).
- (11) Paragraph 1 of Schedule 9 was amended by paragraph 15 of Schedule 1 to the [Planning and Compensation Act 1991](#) (c. 34).

- others, to make orders conferring powers for improvement, construction, etc., of harbours) of the Harbours Act 1964⁽¹²⁾;
- (g) authorising works in a fishery harbour pursuant to powers contained in an order under section 14(1) or 16(1) or (2) of the Harbours Act 1964;
 - (h) directing under the following provisions that if an application is made for planning permission it must be granted under—
 - (i) section 141(3) of that Act (action in relation to purchase notice); or
 - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (action in relation to listed building purchase notice)⁽¹³⁾;
 - (i) making an order under any of the following provisions of the Highways Act 1980⁽¹⁴⁾ in relation to works carried out by the Welsh Ministers—
 - (i) section 10 (general provision as to trunk roads);
 - (ii) section 14 (powers as respects roads that cross or join trunk or classified roads);
 - (iii) section 18 (supplementary orders relating to special roads);
 - (j) making a scheme under section 16 of the Highways Act 1980 in relation to works carried out by the Welsh Ministers;
 - (k) directing under section 12 of the PHSA that hazardous substances consent is deemed to be granted;
 - (l) granting hazardous substances consent under section 20 of the PHSA; and
 - (m) granting hazardous substances consent under section 177(1)(a) of the TCPA (as applied to hazardous substances contravention notices and modified by regulation 16 and Schedule 4).

(7) This regulation applies to a decision to carry out works under section 24(1) of the Highways Act 1980 (construction of new highways), which does not relate to the exercise of any of the provisions of paragraph (6)(i) or (j) as if it were “a consent, permission or other authorisation” referred to in paragraph (1).

(8) In relation to any consent, permission or authorisation falling within paragraph (6) or (7) which is capable of being varied or modified, the modification or variation must be treated by the competent authority as if it is a consent, permission or other authorisation for a relevant project for the purposes of this regulation where that modification or variation authorises development falling within paragraph (x) of the Table in Schedule 4 to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

(9) In this regulation, “new establishment” (*“sefydliad newydd”*) has the same meaning as in Article 3 of the Directive.

(12) 1964 c. 40. The functions of the Minister in relation to fishery harbours under sections 14 and 16 of the PHSA were transferred to the Welsh Ministers by article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), as amended by the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253).

(13) 1990 c. 9.

(14) 1980 c. 66. Section 10(2)(a)(i) was amended by section 22(2)(a) of the New Roads and Street Works Act 1991. There are other amendments to the Act which are not relevant to this instrument.