
WELSH STATUTORY INSTRUMENTS

2017 No. 567

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

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.

(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(1);

“the 1995 Act” (“*Deddf 1995*”) means the Environment Act 1995(2);

“the 2012 Order” (“*Gorchymyn 2012*”) means the Town and Country Planning (Development Management Procedure) (Wales) Order 2012(3);

“the 2016 Order” (“*Gorchymyn 2016*”) means the Developments of National Significance (Procedure) (Wales) Order 2016(4);

“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;

(1) 1991 c. 34.

(2) 1995 c. 25.

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

(4) S.I. 2016/55 (W. 25).

“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⁽⁵⁾;
 - (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;

“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⁽⁶⁾;

“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⁽⁷⁾;

(5) See S.I. 2012/1903 (W. 230).

(6) 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.

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

“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(8);

“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;

“principal council” (“*prif gyngor*”) has the meaning given by section 270(1) (general provisions as to interpretation) of the Local Government Act 1972(9);

“register” (“*cofrestr*”) means a register kept pursuant to section 69 of the 1990 Act (registers of applications etc.)(10) 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(11); or
- (b) a direction under section 77 of the 1990 Act (reference of applications to Secretary of State)(12);

“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);

(8) 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).

(9) 1972 c. 70. “Principal council” means a council elected for a county borough.

(10) 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.

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

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

“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—

- (a) land notified under section 28(1) (sites of special scientific interest) of the Wildlife and Countryside Act 1981(13);
- (b) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949(14);
- (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(15);
- (d) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(16);
- (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(17);
- (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.

(13) 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).

(14) 1949 c. 97, see section 5(3). See section 27AA for the application of section 28 in relation to land in Wales.

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

(16) 1979 c. 46. See the definition in section 1(11).

(17) 2000 c. 37. Section 82(2) was amended by S.I. 2013/755.

(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)(18).

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.

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(19) and Directive 2009/147/EC(20);
- (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.

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

(19) 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.

(20) 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 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.