

WELSH STATUTORY INSTRUMENTS

2017 No. 567

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

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) ^{M1} 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.

Marginal Citations

M1 Section 288(1)(b) was amended by the Planning (Wales) Act 2015 (anaw 4), section 27 and Schedule 4, paragraph 16.

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) ^{M2} to the period of 12 weeks is a reference to the period of 20 weeks.

Marginal Citations

M2 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)).

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) ^{M3} 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.

Marginal Citations

M3 There are amendments to section 60 which are not relevant to 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)—
 - (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) ^{M4} 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”.

Marginal Citations

- M4** 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.

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 [F¹(2), (7) and (8)].

[F²(2) The 2016 Regulations continue to have effect where before 16 May 2017—

- (a) the applicant or appellant submitted an environmental statement or requested a scoping opinion in respect of the development; or
- (b) in respect of—
 - (i) local development orders;
 - (ii) section 97 orders;
 - (iii) section 102 orders; or
 - (iv) action under section 141 of the 1990 Act,

the local planning authority, the initiating body or the applicant prepared an environmental statement or a scoping opinion or requested a scoping direction in connection with that order or action.]

- (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 ^{M5}.

- (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 [F³(2), (7) and (8)].

- (10) In this regulation—

“2016 Regulations” (“*Rheoliadau 2016*”) means the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 ^{M6};

“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).

Textual Amendments

- F1** Words in [reg. 65\(1\)](#) substituted (1.4.2019) by [The Town and Country Planning \(Environmental Impact Assessment\) \(Wales\) \(Amendment\) Regulations 2019 \(S.I. 2019/299\)](#), regs. 1(2), **2(2)(a)**
- F2** [Reg. 65\(2\)](#) substituted for [reg. 65\(2\)-\(6\)](#) (1.4.2019) by [The Town and Country Planning \(Environmental Impact Assessment\) \(Wales\) \(Amendment\) Regulations 2019 \(S.I. 2019/299\)](#), regs. 1(2), **2(2)(b)**
- F3** Words in [reg. 65\(9\)](#) substituted (1.4.2019) by [The Town and Country Planning \(Environmental Impact Assessment\) \(Wales\) \(Amendment\) Regulations 2019 \(S.I. 2019/299\)](#), regs. 1(2), **2(2)(c)**
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Marginal Citations

- M5** [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.
- M6** [S.I. 2016/58](#) (W. 28).

Consequential amendments

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

Changes to legislation:

There are currently no known outstanding effects for the The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017, PART 13.