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WELSH STATUTORY INSTRUMENTS

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**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)(1) 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.

**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)(2) to the period of 12 weeks is a reference to the period of 20 weeks.

### **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)(3) 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.

### **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)(4) 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”.

### **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 (2) to (8).

(2) Where the condition in paragraph (3) applies the 2016 Regulations continue to have effect in respect of the following—

- (a) an application for planning permission;

(2) 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)).

(3) There are amendments to section 60 which are not relevant to these Regulations.

(4) 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.

- (b) a ROMP application to which the 2016 Regulations apply;
  - (c) an appeal in relation to an application within sub-paragraph (a) or (b);
  - (d) a matter in relation to which a local planning authority have issued an enforcement notice under section 172 of the 1990 Act.
- (3) For the purposes of paragraph (2), the condition is that before 16 May 2017 the applicant or appellant (as the case may be) has—
- (a) requested a scoping opinion or a scoping direction; or
  - (b) submitted an environmental statement,  
in respect of the development to which the application or appeal relates.
- (4) Where the condition in paragraph (5) applies the 2016 Regulations continue to have effect in respect of the following—
- (a) a proposed local development order;
  - (b) a proposed section 97 or a section 102 order.
- (5) For the purposes of paragraph (4), the condition is that before 16 May 2017 the local planning authority, the initiating body or the applicant (as the case may be) has—
- (a) requested a scoping opinion or a scoping direction; or
  - (b) prepared an environmental statement,  
in respect of the development to which the proposed order relates.
- (6) The 2016 Regulations continue to have effect in respect of proposed action under section 141 of the 1990 Act where before 16 May 2017 the applicant, as defined in paragraph 3 of Schedule 7, has—
- (a) requested a scoping opinion or a scoping direction; or
  - (b) submitted an environmental statement,  
in respect of the development to which the proposed action relates.
- (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(5).
- (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 (2) to (8).
- (10) In this regulation—
- “2016 Regulations” (“*Rheoliadau 2016*”) means the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016(6);

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(5) 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.

(6) S.I. 2016/58 (W. 28).

“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).

### **Consequential amendments**

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