

2008 No. 2335 (W.198)

**TOWN AND COUNTRY
PLANNING, WALES**

The Town and Country Planning
(Environmental Impact
Assessment) (Amendment) (Wales)
Regulations 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I.1999/293) (“the 1999 regulations”) implemented, in England and Wales, Council Directive 85/337/EEC (“the EIA Directive”) on the assessment of the effects of certain public and private projects on the environment (O.J. No. L175, 5.7.1985, p.40) as amended by Council Directive 97/11/EC (O.J. No. L73, 14.3.1997, p.5). The EIA Directive was also amended by Council Directive 2003/35/EC (O.J. No. L156, 25.6.2003, p.17).

These Regulations amend the 1999 Regulations to implement the Directives in respect of applications for approval of reserved matters and applications for approval of similar conditions attached to the grant of planning permissions (“subsequent applications”).

Regulations 2 to 12 amend the 1999 Regulations so that their provisions apply to subsequent applications. References to the National Assembly for Wales have been updated to references to the Welsh Ministers.

Regulation 7 applies to subsequent consents under article 8 of, and Schedule 3 to, the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419, amended by S.I. 1999/293, 2004/3256 and 2006/1386), which provide for publicity procedures to be followed by local planning authorities in the case of planning permissions that are subject to environmental impact assessment.

Regulation 13 amends the Town and Country Planning (Determination of Appeals by Appointed Persons)

(Prescribed Classes) Regulations 1997, which prescribe the classes of appeal which are to be determined by persons appointed by the Welsh Ministers in accordance with the provisions of Schedule 6 to the Town and Country Planning Act 1990 instead of being determined by the Welsh Ministers. It excludes from the reserved classes of appeal, enforcement appeals relating to unauthorised development to which the EIA Directive applies.

A regulatory impact assessment has been prepared and copies can be obtained from the Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ.

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Made 31 August 2008

*Laid before the National Assembly
for Wales* 2 September 2008

Coming into force 6 October 2008

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in so far as it concerns town and country planning.

The Welsh Ministers make these Regulations in exercise of the powers vested in them by section 2(2) of the European Communities Act 1972 and conferred by section 333 of, and paragraph 1 of Schedule 6 to, the Town and Country Planning Act 1990⁽³⁾.

⁽¹⁾ S.I. 2007/1679.

⁽²⁾ 1972 c.68. The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51).

⁽³⁾ 1990 c.8; paragraph 1 of Schedule 6 was amended by section 120 of, and Schedule 22, paragraph 44 to, the Environment Act 1995 (c.25). These powers are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales. They were previously transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672: see the entry in Schedule 1 for the Town and Country Planning Act 1990 as substituted article 4 of, and by Schedule 3, paragraph (d) to the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253). By virtue of section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32) they were transferred to the Welsh Ministers.

Title, commencement, extent and application

1.—(1) The title of these Regulations is the Town and Country Planning (Environmental Impact Assessment) (Amendment) (Wales) Regulations 2008.

(2) These Regulations come into force on 6 October 2008.

(3) These Regulations extend to Wales and England and apply in relation to Wales.

Amendment of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

2. The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (1) are amended in accordance with regulations 3 to 11.

Amendments to Part 1 (general)

3.—(1) In regulation 1(2) for “paragraph (3)” substitute “paragraphs (3) and (4)”.

(2) In regulation 2(1) (interpretation)—

(a) insert at the appropriate place—

““subsequent application” means an application for approval of a matter where the approval—

(a) is required by or under a condition to which a planning permission is subject; and

(b) must be obtained before all or part of the development permitted by the planning permission may be begun;

“subsequent consent” means consent granted pursuant to a subsequent application.”;

(b) for the definition of “EIA application” substitute—

““EIA application” means—

(a) an application for planning permission for EIA development; or

(b) a subsequent application in respect of EIA development;”; and

(c) for the definition of “Schedule 1 application and Schedule 2 application” substitute—

““Schedule 1 application” means—

(a) an application for planning permission for Schedule 1 development; or

(1) S.I. 1999/293. Relevant amendments have been made by S.I. 2000/2867, S.I. 2006/3099 and S.I. 2006/3295.

- (b) a subsequent application in respect of Schedule 1 development; and

“Schedule 2 application” means—

- (a) an application for planning permission for Schedule 2 development; or
- (b) a subsequent application in respect of Schedule 2 development;”.

(3) In regulation 2(6)—

- (a) for “its” substitute “their”;
- (b) after “these Regulations” insert “except regulation 37”; and
- (c) for “the National Assembly for Wales” substitute “the Welsh Ministers”.

(4) For regulation 3 (prohibition on granting planning permission without consideration of environmental information) substitute—

“Prohibition on granting planning permission or subsequent consent without consideration of environmental information

3.—(1) This regulation applies—

- (a) to every application for planning permission for EIA development received by the authority with whom it is lodged on or after the commencement of these Regulations;
- (b) to every application for planning permission for EIA development lodged by an authority pursuant to regulation 3 or 4 (applications for planning permission) of the General Regulations on or after that date;
- (c) to every subsequent application in respect of EIA development received by the authority with whom it is lodged on or after the commencement of these Regulations but which was not determined by 6 October 2008; and
- (d) to every subsequent application in respect of EIA development lodged by an authority pursuant to regulation 11 of the General Regulations on or after the commencement of these Regulations but which was not determined by 6 October 2008;

and for the purposes of this paragraph, the date of receipt of an application by an authority shall be determined in accordance with paragraph (3) of article 20 (time periods for decision) of the Order.

(2) The relevant planning authority or the Secretary of State or an inspector shall not grant

planning permission or subsequent consent pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration, and they shall state in their decision that they have done so.”.

Amendments to Part 2 (screening)

4. In regulation 5(2) (requests for screening opinions of the local planning authority) after sub-paragraph (a) insert—

“(aa) sufficient information to enable the relevant planning authority to identify any planning permission granted for the development in respect of which a subsequent application has been made;”.

Amendments to Part 3 (procedures concerning applications for planning permission)

5.—(1) For regulation 7 (application made to a local planning authority without an environmental statement) substitute—

“Application made to a local planning authority without an environmental statement

7.—(1) Where it appears to the relevant planning authority that—

- (a) an application which is before them for determination is a Schedule 1 application or Schedule 2 application; and
- (b) the development in question—
 - (i) has not been the subject of a screening opinion or screening direction; or
 - (ii) in the case of a subsequent application, was the subject of a screening opinion or direction before planning permission was granted to the effect that it is not EIA development; and
- (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

paragraphs (3) and (4) of regulation 5 shall apply as if the receipt or lodging of the application were a request made under regulation 5(1).

(2) Where an EIA application which is before a local planning authority for determination is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, the authority shall notify the applicant in writing that the submission of an environmental statement is required.

(3) Where the relevant planning authority is aware that any particular person is or is likely to be affected by, or has an interest in, the application, who is unlikely to become aware of it by means of a site notice or by local advertisement, the relevant planning authority shall notify the applicant of any such person.

(4) An authority shall notify the applicant in accordance with paragraph (2) within three weeks beginning with the date of receipt of the application or such longer period as may be agreed in writing with the applicant; but where the Secretary of State, after the expiry of that period of three weeks or of any longer period so agreed, makes a screening direction to the effect that the development is EIA development, the authority shall so notify the applicant within seven days beginning with the date the authority received a copy of that screening direction.

(5) An applicant receiving a notification pursuant to paragraph (2) may, within three weeks beginning with the date of the notification, write to the authority stating—

- (a) that he accepts their view and is providing an environmental statement; or
- (b) unless the condition referred to in paragraph (6) is satisfied, that he is writing to the Secretary of State to request a screening direction.

(6) For the purpose of paragraph (5)(b) the condition is—

- (a) if the application referred to in paragraph (2) is an application for planning permission, that the Secretary of State has made a screening direction in respect of the development;
- (b) if the application referred to in paragraph (2) is a subsequent application, that the Secretary of State has made a screening direction subsequent to that application in respect of the development.

(7) If the applicant does not write to the authority in accordance with paragraph (5), the permission or subsequent consent sought shall,

unless the condition referred to in paragraph (8) is satisfied, be deemed to be refused at the end of the relevant three week period, and the deemed refusal—

- (a) shall be treated as a decision of the authority for the purposes of paragraph (4)(c) of article 25 (register of applications) of the Order; but
- (b) shall not give rise to an appeal to the Secretary of State by virtue of section 78 (right to appeal against planning decisions and failure to take such decisions).

(8) For the purpose of paragraph (7) the condition is—

- (a) if the application referred to in paragraph (2) is an application for planning permission, that the Secretary of State has made a screening direction to the effect that the development is not EIA development;
- (b) if the application referred to in paragraph (2) is a subsequent application, that the Secretary of State has made a screening direction subsequent to that application, to the effect that the development is not EIA development.

(9) An authority which has given a notification in accordance with paragraph (2) shall, unless the Secretary of State makes a screening direction to the effect that the development is not EIA development, determine the relevant application only by refusing planning permission or subsequent consent if the applicant does not submit an environmental statement and comply with regulation 14(5).

(10) A person who requests a screening direction pursuant to paragraph (5)(b) shall send to the Secretary of State with his request copies of—

- (a) his application;
- (b) all documents sent to the authority as part of the application;
- (c) all correspondence between the applicant and the authority relating to the proposed development;
- (d) a copy of any planning permission granted for the development; and
- (e) in the case of a subsequent application, documents or information relating to the planning permission granted for the

development that are relevant to the application,

and paragraphs (2) to (5) of regulation 6 shall apply to a request under this regulation as they apply to a request made pursuant to regulation 5(6).”.

(2) In regulation 8 (application referred to the Secretary of State without an environmental statement)—

(a) in paragraph (1) omit the words “for planning permission”;

(b) for paragraph (1)(b) substitute—

“(b) the development in question—

(i) has not been the subject of a screening opinion or screening direction; or

(ii) in the case of a subsequent application, was the subject of a screening opinion or direction before planning permission was granted to the effect that it is not EIA development; and”;

(c) in paragraph (6) after “permission” insert “or subsequent consent”.

(3) In regulation 9 (appeal to the Secretary of State without an environmental statement)—

(a) for paragraph (1)(b) substitute—

“(b) the development in question—

(i) has not been the subject of a screening opinion or screening direction; or

(ii) in the case of a subsequent application, was the subject of a screening opinion or direction before planning permission was granted to the effect that it is not EIA development; and”;

(b) in paragraphs (2) and (7) after “permission” insert “or subsequent consent”.

Amendments to Part 4 (preparation of environmental statements)

6.—(1) In regulation 10 (scoping opinions of the local planning authority)—

(a) after paragraph (2)(a) insert—

“(aa) sufficient information to enable the relevant planning authority to identify any planning permission granted for the development in respect of which a subsequent application has been made;”; and

(b) in paragraph (9) after “planning permission” insert “or a subsequent application”.

(2) In regulation 11 (scoping directions of the Secretary of State) in paragraph (6) after “planning permission” insert “or a subsequent application”.

(3) In regulation 12(3)(b) (procedure to facilitate preparation of environmental statements) for “7(4)(a)” substitute “7(5)(a)”.

Amendments to Part 5 (publicity and procedures on submission of environmental statements)

7.—(1) In regulation 13 (procedure where an environmental statement is submitted to a local planning authority) after paragraph (3) insert—

“(3A) Where an applicant submits an environmental statement to the authority in accordance with paragraph (1), the provisions of article 8 of and Schedule 3 to the Order (publicity for applications for planning permission) shall apply to a subsequent application as they apply to a planning application falling within paragraph 8(2) of the Order except that for the reference in the notice in Schedule 3 to the Order to “planning permission to” there shall be substituted “subsequent application in respect of”.

(2) In regulation 14 (publicity where an environmental statement is submitted after the planning application)—

(a) in paragraph (1) after “planning permission” insert “or a subsequent application”;

(b) in paragraph (2)(a) after “planning permission” insert “or subsequent consent”;

(c) in paragraph (2)(d) after “statement” insert “and, in the case of a subsequent application, a copy of the planning permission in respect of which that application has been made and supporting documents,”;

(d) in paragraph (2A) for “7(2A)” substitute “7(3)”; and

(e) in paragraph (6) after “permission” insert “or subsequent consent”.

(3) In regulation 15 (provision of copies of environmental statements and further information for the Secretary of State on referral or appeal) after “planning permission” insert “or subsequent consent”.

(4) In regulation 17 (availability of copies of environmental statements) after “planning permission” insert “or subsequent consent”.

(5) In regulation 19 (further information and evidence respecting environmental statements)—

- (a) in paragraph (3)(a) after “planning permission” insert “or subsequent consent”;
- (b) after paragraph (3)(b) insert—
 - “(bb) in the case of a subsequent application, sufficient information to enable the planning permission for the development to be identified;”;
- (c) in paragraph (3)(e) after “any other information” insert “and of any statement referred to as an environmental statement for the purpose of these Regulations which relates to any planning permission or subsequent application”.

Amendments to Part 6 (availability of directions etc. and notifications of decisions)

8. In regulation 20 (availability of opinions, directions etc. for inspection)—

- (a) in paragraph (1) after “planning application” insert “or of a subsequent application”; and
- (b) in paragraph (2) after “planning permission” insert “or subsequent consent”.

Amendments to Part 7 (special cases)

9.—(1) In regulation 22 (development by a local planning authority)—

- (a) in paragraph (1)(b) for “(2) to (7)” substitute “(2) to (10)”;
- (b) for paragraph (1)(e)(i) substitute—

“(i) for paragraph (1), there were substituted—

“(1) When a relevant planning authority making an EIA application lodge a statement which they refer to as an environmental statement for the purposes of these Regulations, they shall—

- (a) serve a copy of—
 - (i) that statement;
 - (ii) the relevant application and any plan submitted with it; and
 - (iii) in the case of a subsequent application, the planning permission granted for the development in respect of which the subsequent application has been made and any documents or information relating to the application,

on each consultation body;

- (b) inform each consultation body that representations may be made to the relevant planning authority; and
- (c) send to the Secretary of State within 14 days of lodging the statement—
 - (i) two copies of the statement;
 - (ii) a copy of the relevant application and of any documents submitted with the application; and
 - (iii) in the case of a subsequent application, the planning permission granted for the development in respect of which the subsequent application has been made and any documents or information relating to the application.”;” and

(c) in paragraph (2) after “planning application” insert “or a subsequent application”.

(2) In regulation 25 (unauthorised development)—

- (a) in paragraph (1)—
 - (i) after “Secretary of State” insert “or an inspector”; and
 - (ii) after “shall not grant planning permission” insert “or subsequent consent”.
- (b) in paragraph (9)—
 - (i) omit from “and, in either case” to “that development”; and
 - (ii) omit “such”.

(c) after paragraph (9) insert—

“(9A) Where an inspector is dealing with an appeal under section 174 and a question arises as to whether the matters which are alleged to constitute the breach of planning control comprise or include Schedule 1 development or Schedule 2 development, the inspector shall refer that question to the Secretary of State;

(9B) Before he receives a screening direction the inspector shall not determine the application which is deemed to have been made by virtue of the appeal under section 174 (“the deemed application”) except to refuse that application;

(9C) Where a question is referred to the Secretary of State under paragraph (9A) he shall make a screening direction within three weeks beginning with the date on which the question

was referred to him or such longer period as he may reasonably require;

(9D) The Secretary of State shall send a copy of any screening direction made pursuant to paragraph (9C) forthwith to the inspector.”;

- (d) in paragraph (11)(a) omit “(“the deemed application”)”;
 - (e) in paragraph (12) after “Where the Secretary of State” insert “or an inspector”;
 - (f) in paragraph (14)(a)—
 - (i) after “where the Secretary of State” insert “or an inspector”;
 - (ii) after “such period as the Secretary of State” insert “or the inspector”; and
 - (iii) after “such longer period as the Secretary of State” insert “or the inspector”;
 - (g) in paragraph (16)—
 - (i) after sub-paragraph (b) insert—

“(bb) sufficient information to enable any planning permission for the development to be identified;”; and
 - (ii) in sub-paragraph (c) after “any other information” insert “and of any planning permission”;
 - (h) in paragraph (18) after “he” insert “or an inspector”; and
 - (i) in paragraph (20) after “Secretary of State” insert “or an inspector”.
- (3) In regulation 26A (ROMP applications) —
- (a) in paragraph (3) for “7(4)” substitute “7(5)”;
 - (b) in paragraph (4) for “7(5) and (6)” substitute “7(7) and (9)”;
 - (c) in paragraph (8) after “application for planning permission” insert “or a subsequent application”;
 - (d) in paragraph (9) for “after paragraph (3) insert” substitute “for paragraph (3A) substitute”;
 - (e) in paragraph (10)—
 - (i) in sub-paragraph (a) after “applicant for planning permission” insert “or subsequent consent”; and
 - (ii) in sub-paragraph (b) after “refuse the permission” insert “or subsequent consent”;
 - (f) in paragraph(13)(a) after “for planning permission” insert “or subsequent consent”;
 - (g) in paragraph (17)(a) for “7(4)” substitute “7(5)”;

- (h) in paragraph 28—
 - (i) in sub-paragraph (b) for “4 (general provisions relating to screening)” substitute “4A omit sub-paragraph (a)”;
and
 - (ii) in sub-paragraph (d)(i) for “7(4)(a)” substitute “7(5)(a)”

Amendments to Part 8 (development with significant transboundary effects)

10. In regulation 27 (development in England and Wales likely to have significant effects in another EEA State)—

- (a) after paragraph (3)(a) insert—
 - “(aa) a copy of any planning permission relating to the development;”;and
- (b) in paragraph (3)(b) for “a copy of the” substitute “a copy of any”.

Amendments to Part 9 (miscellaneous)

11. In regulation 30 (application to the High Court) after “planning permission” insert “or subsequent consent”.

12. In regulation 37 (projects serving national defence purposes in Wales) —

- (a) In paragraph (2) for “the National Assembly for Wales” substitute “the Welsh Ministers”;
and
- (b) In paragraph (3) for “the National Assembly for Wales” substitute “the Welsh Ministers”.

Amendment of the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997

13. In regulation 4 (classes of appeal reserved for determination by the Secretary of State) of the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997(1)—

- (a) omit paragraph (c);
- (b) for “(d)” substitute “(c)”;
- (c) for “(e)” substitute “(d)”;
- (d) for “(f)” substitute “(e)”.

(1) S.I. 1997/420, to which there are amendments not relevant to these regulations.

Jane Davidson

Minister for Environment, Sustainability and Housing,
one of the Welsh Ministers

31 August 2008