

INFRASTRUCTURE (WALES) ACT 2024

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 – General provisions

354. **Part 9** of the Act contains general provisions which relate to multiple parts or all of the Act. Sections 136, 137, 138 and 139 make provisions about giving notices, directions and other documents and make provision about the duties that apply when publishing something under the Act. Section 140 makes provisions about the restrictions that apply to any regulations made under the Act or an infrastructure consent order made under the Act and section 141 sets out the procedures for making regulations (Section 85 sets out the procedure for infrastructure consent orders). Sections 144 and 145 provide the Welsh Ministers with powers to make further incidental, consequential, transitional, transitory or saving provisions by regulations. Section 146 sets out transitional and saving provisions.

Development

Section 133 – Meaning of “development”

355. **Section 133** sets out the meaning of “development” for the purposes of the Act. Everything that is “development” for the purposes of the Town and Country Planning Act 1990 (“the TCPA”) is development for the purposes of the Act, subject to subsections (2) to (4).
356. **Section 55(1)** of the TCPA defines “development” as “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”, subject to further clarifications in that section.
357. Subsection (2) of section 133 provides that “material change in the use” (which is a term used in the definition of “development” in section 55(1) of the TCPA) includes:
- the conversion in fuel of a generating station to it being fuelled by crude liquid petroleum, a petroleum product or natural gas;
 - an increase in the permitted use of an airport (whether permitted by planning permission under the TCPA or an infrastructure consent order made under the Act).
358. Subsection (3) provides that specific works are to be treated as development to the extent that they would not otherwise be development under the TCPA.
359. Development under the TCPA relates to development of land within the areas of planning authorities and not development in the sea outside the boundaries of their areas. Subsection (4) provides that development under the Act includes operations and changes of use in the sea and other areas covered with waters. The extent to which development in the sea is covered in relation to a Significant Infrastructure Project depends on whether the definition of the Significant Infrastructure Project

covers development in the “Welsh marine area”. The “Welsh marine area” is defined in section 143.

Crown land

Section 134 – Crown land and “the appropriate Crown authority”

360. This section defines “Crown land”, “Crown interest”, “Duchy interest” and “the appropriate Crown authority” for the purposes of the Act.

Offences

Section 135 – Offences by bodies corporate

361. This section provides that where an offence is committed under section 28, 103, 104, 112 or 120 by a body corporate and it is proved to have been committed with the consent or connivance of a senior officer of the body or a person purporting to be senior officer of the body, or attributed to their neglect, that person will be guilty of an offence (as well as the body corporate) and is liable to be prosecuted. In this section “senior officer” means a director, manager, secretary or other similar officer of the body corporate.

Giving notices and other documents

Section 136 – Giving notices and other documents

362. This section contains provision about how notices, directions and other documents are to be served.

Section 137 – Giving notices etc. to persons occupying or with an interest in land

363. This section makes further provision about serving a notice or a document on a person interested in land or occupying land.

Section 138 – Giving documents on the Crown

364. This section specifies that any notice or document required by or under the Act to be served on the Crown must be served on the appropriate Crown authority, and the rules about giving notices set out in sections 136 and 137 do not apply. For the purpose of this section, “the Crown” includes the Duchy of Lancaster and the Duchy of Cornwall.

General

Section 139 – Duties to publish

365. Where the Act imposes a duty to publish something, it must be published electronically. Nothing in this section prevents the person subject to the duty from publishing in another way as well as publishing electronically.

Section 140 – Regulations and orders: restrictions

366. This section sets out that regulations under sections 30, 34, 35, 48(6), 63(5), 91(3) 124 and 129 of the Act or an infrastructure consent order or an order under section 90 may include provision that would require the consent of the Secretary of State (i.e. “the appropriate Minister”) under any of paragraphs 8(1)(a) or (c), 10 or 11 of Schedule 7B to the Government of Wales Act 2006 if the provision were included in an Act of Senedd Cymru.

367. This section also provides that regulations under sections 30, 34, 35, 48(6), 63(5), 91(3), 124 and 129 of the Act or an infrastructure consent order or an order under section 90 may include provision that would require consultation of the appropriate Minister under

paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006 if the provision were included in an Act of Senedd Cymru. See correspondence between the Secretary of State and the Welsh Ministers over the period 2023 to 2024¹ confirming consent under Schedule 7B for the provisions, including a commitment to consult the UK Government prior to making regulations which affect reserved bodies.

368. Regulations and orders under any other section of this Act may not include provision that would require the consent of the appropriate Minister under paragraph 8, 10 or 11 of Schedule 7B to the Government of Wales Act 2006 if the provision were included in an Act of Senedd Cymru; and may not include provision that would require consultation of the appropriate Minister under paragraph 11(2) or (2A) of Schedule 7B to that Act if the provision were included in an Act of Senedd Cymru.

Section 141 – Regulations: procedure

369. This section provides that a power to make regulations under the Act is exercisable by statutory instrument.
370. Subsection (3) provides that a statutory instrument containing regulations made under the following sections of the Act are to be made under the affirmative procedure (i.e. a draft of the instrument should be laid before, and approved by a resolution of, Senedd Cymru):
- section 17 - power to add, vary or remove projects;
 - section 21 - power to add or remove types of consent;
 - section 22(2)(c) - directions specifying development as a significant infrastructure project;
 - section 55(1) - power for the examining authority to decide certain kinds of applications for infrastructure consent;
 - section 58(3) - updating of matters that may be disregarded when making decisions on applications;
 - section 59(6) - power to amend the timetable for deciding an application for infrastructure consent;
 - section 63(5) - what may be included in an infrastructure consent order;
 - section 124 - fees for performance of infrastructure consent functions and services;
 - section 130 – directions to public authorities;
 - section 131 - power to disapply requirements;
 - section 132 – applications by the Crown;
 - section 144 - power to make consequential and transitional provision etc., but only where the regulations amend, repeal or otherwise modify a provision of an Act of Parliament, a Measure of the National Assembly for Wales or an Act of Senedd Cymru;
 - paragraph 2(1) of Schedule 2.
371. Statutory instruments containing regulations made under any other power in the Act are subject to the negative procedure (i.e. annulment following a resolution of Senedd Cymru).

¹ <https://business.senedd.wales/documents/s144189/LJC6-04-24%20-%20Paper%2016%20-%20Letter%20from%20the%20Minister%20for%20Climate%20Change%2022%20January%202024.pdf>.

Section 142 – Directions: general

372. This section requires a direction given under or by virtue of this Act to be in writing.

Section 143 – General interpretation

373. This section defines certain terms used in the Act.

Section 144 – Power to make consequential and transitional provision etc.

374. This section confers upon the Welsh Ministers a regulation-making power which may be used to make supplementary, incidental, or consequential provision and transitional or saving provision. Regulations under this section may amend, modify, repeal or revoke any enactment (including an enactment contained in this Act).

Section 145 – Consequential amendments and repeals

375. This section refers to Schedule 3 which makes provision in consequence of this Act.

Section 146 – Transitional and saving provision

376. This section makes transitional and savings provisions.

Section 147 – Coming into force

377. This section makes provision about when the provisions of the Act come into force.

Section 148 – Short title

378. The short title of this Act is the Infrastructure (Wales) Act 2024.