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WELSH STATUTORY INSTRUMENTS

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**2016 No. 58**

The Town and Country Planning (Environmental  
Impact Assessment) (Wales) Regulations 2016

PART 3

Procedures Concerning Applications for Planning Permission

**Applications which appear to require screening opinion**

7. Where it appears to the relevant planning authority that—
- (a) an application which is before them for determination is a Schedule 1 application or a Schedule 2 application;
  - (b) the development in question has not been the subject of a screening opinion or screening direction; 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 (4) and (5) of regulation 5 apply as if the receipt or lodging of the application were a request made under regulation 5(1).

**Subsequent applications where environmental information previously provided**

- 8.—(1) This regulation applies where it appears to the relevant planning authority that—
- (a) an application which is before them for determination—
    - (i) is a subsequent application in relation to Schedule 1 or Schedule 2 development;
    - (ii) has not itself been the subject of a screening opinion or screening direction; and
    - (iii) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations; and
  - (b) the original application was accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations.

(2) Where it appears to the relevant planning authority that the environmental information already before them is adequate to assess the environmental effects of the development, they must take that information into consideration in their decision for subsequent consent.

(3) Where it appears to the relevant planning authority that the environmental information already before them is not adequate to assess the environmental effects of the development, they must serve a notice seeking further information in accordance with regulation 22(1).

**Subsequent applications where environmental information not previously provided**

9. Where it appears to the relevant planning authority that—
- (a) an application which is before them for determination—

- (i) is a subsequent application in relation to Schedule 1 or Schedule 2 development;
  - (ii) has not itself been the subject of a screening opinion or screening direction; and
  - (iii) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations; and
- (b) the original application was not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,
- paragraphs (4) and (5) of regulation 5 apply as if the receipt or lodging of the application were a request made under regulation 5(1).

### **Application made to a local planning authority without an environmental statement**

**10.**—(1) Where an EIA application 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 must notify the applicant that the submission of an environmental statement is required.

(2) 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 electronic publication, a site notice or by local advertisement, the relevant planning authority must notify the applicant of any such person.

(3) An authority must notify the applicant in accordance with paragraph (1)—

- (a) within 21 days beginning with the date of receipt of the application or such longer period as may be agreed in writing with the applicant; or
- (b) where the Welsh Ministers, after the expiry of that 21 days or any longer agreed period, make a screening direction to the effect that the development is EIA development, within 7 days beginning with the date the authority received a copy of that screening direction.

(4) An applicant receiving a notification pursuant to paragraph (1) may, within 21 days beginning with the date of the notification, write to the authority stating—

- (a) that the applicant accepts their view and is providing an environmental statement; or
- (b) unless the condition referred to in paragraph (5) is satisfied, that the applicant is writing to the Welsh Ministers to request a screening direction.

(5) For the purpose of paragraph (4)(b) the condition is that the Welsh Ministers have made a screening direction—

- (a) in respect of the development, in the case of an application for planning permission; or
- (b) pursuant to a subsequent application,
- (c) as the case may be.

(6) If the applicant does not write to the authority in accordance with paragraph (4), the permission or subsequent consent sought is deemed to be refused at the end of the relevant 21 days, unless the condition referred to in paragraph (7) is satisfied and the deemed refusal—

- (a) is treated as a decision of the authority for the purposes of article 29(3)(c) (register of applications) of the 2012 Order; but
- (b) does not give rise to an appeal to the Welsh Ministers under section 78 of the 1990 Act (right to appeal against planning decisions and failure to take such decisions)(1).

(1) Section 78 was amended by the 1991 Act, section 17(2); the Planning and Compulsory Purchase Act 2004 (c. 5), section 43(2); the Localism Act 2011 (c. 20), section 121 and Schedule 12, paragraphs 1 and 11 and section 123(1) and (3); the Planning Act 2008 (c. 29), section 196(4) and Schedule 10, paragraphs 1 and 3, section 197 and Schedule 11, paragraphs 1 and 2; the Growth and Infrastructure Act 2013 (c. 27), section 1(2) and Schedule 1, paragraphs 1 and 8; the Planning (Wales) Act 2015,

(7) For the purpose of paragraph (6) the condition is that the Welsh Ministers have made a screening direction to the effect that the development is not EIA development—

- (a) in the case of an application for planning permission; or
- (b) pursuant to a subsequent application,

as the case may be.

(8) Unless the Welsh Ministers make a screening direction to the effect that the development is not EIA development an authority which has given a notification in accordance with paragraph (1) must 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 17(6).

(9) A person who requests a screening direction pursuant to paragraph (4)(b) must send to the Welsh Ministers with the request copies of—

- (a) the 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, relevant documents or information relating to the planning permission granted for the development,

and paragraphs (2) to (7) of regulation 6 apply to a request under this regulation as they apply to a request made pursuant to regulation 5(7).

### **Application referred to the Welsh Ministers without an environmental statement**

**11.**—(1) Where an application has been referred to the Welsh Ministers for determination under section 77 of the 1990 Act (reference of applications to the Welsh Ministers)(2), and it appears to the Welsh Ministers that—

- (a) it is an EIA application;
- (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 was 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 6 apply as if the referral of the application were a request made by the applicant pursuant to regulation 5(7).

(2) Where an application has been referred to the Welsh Ministers for determination, and it appears to the Welsh Ministers that—

- (a) it is an EIA application,
- (b) paragraph (1)(b) does not apply; and

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sections 45 and 46; and by S.I. 2014/2773 (W. 280), article 3 and Schedule 1, paragraphs 1 and 3. There is another amendment which is not relevant to this instrument.

(2) Section 77 was amended by the 1991 Act, section 32, Schedule 7, paragraph 18; the Infrastructure Act 2015 (c. 7), section 30(1) and Schedule 4, Part 2, paragraphs 2 and 11(a); and by S.I. 2014/2773 (W. 280), article 3 and Schedule 1, paragraphs 1 and 2. There are other amendments which are not relevant to this instrument.

(c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,  
the Welsh Ministers must notify the applicant that the submission of an environmental statement is required and must send a copy of that notification to the relevant planning authority.

(3) The Welsh Ministers must notify the applicant in accordance with paragraph (2) within 21 days beginning with the date the application was received or such longer period as may be reasonably required.

(4) Where the Welsh Ministers are 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 electronic publication, a site notice or by local advertisement, they must notify the applicant of any such person.

(5) An applicant who receives a notification under paragraph (2) may, within 21 days beginning with the date of the notification, confirm to the Welsh Ministers that an environmental statement will be provided.

(6) If the applicant does not write in accordance with paragraph (5), the Welsh Ministers do not have a duty to deal with the application and at the end of the 21 days they must inform the applicant that no further action is being taken on the application.

(7) Where—

- (a) a notification has been given under paragraph (2), and
- (b) the applicant does not submit an environmental statement which complies with regulation 17(6),

the Welsh Ministers must determine the relevant application only by refusing planning permission or subsequent consent.

### **Appeal to the Welsh Ministers without an environmental statement**

**12.—**(1) Where, on consideration of an appeal under section 78 of the 1990 Act (right to appeal against planning decisions and failure to take such decisions) it appears to the Welsh Ministers that—

- (a) the relevant application is an EIA 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 relevant application is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations,

paragraphs (3) and (4) of regulation 6 apply as if the appeal were a request made by the appellant pursuant to regulation 5(7).

(2) Where an inspector is dealing with an appeal and a question arises as to whether the relevant application is an EIA application and it appears to the inspector that it may be such an application, the inspector must refer that question to the Welsh Ministers and must not determine the appeal before a screening direction is made, except by refusing planning permission or subsequent consent.

(3) Paragraphs (3) and (4) of regulation 6 apply to a question referred under paragraph (2) as if the referral of that question were a request made by the appellant pursuant to regulation 5(7).

(4) Where it appears to the Welsh Ministers that the relevant application is an EIA application and is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations, they must notify the appellant that the submission of an environmental statement is required and must send a copy of that notification to the relevant planning authority.

(5) Where the Welsh Ministers are 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 electronic publication, a site notice or by local advertisement, they must notify the appellant of any such person.

(6) An appellant who receives a notification under paragraph (4), may within 21 days beginning with the date of the notification, confirm to the Welsh Ministers that an environmental statement will be provided.

(7) If the appellant does not write in accordance with paragraph (6), the Welsh Ministers have or, where relevant, the inspector has, no duty to deal with the appeal; and at the end of the 21 days the Welsh Ministers, or the inspector, must inform the appellant that no further action is being taken on the appeal.

(8) Where—

(a) a notification has been given under paragraph (4), and

(b) the appellant does not submit an environmental statement and comply with regulation 17(6),

the Welsh Ministers or, where relevant, the inspector must determine the appeal only by refusing planning permission or subsequent consent.