
WELSH STATUTORY INSTRUMENTS

2009 No. 3342

The Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009

PART 1

General

Title, commencement and application

1.—(1) The title of these Regulations is the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009.

(2) These Regulations come into force on 8 January 2010.

(3) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Town and Country Planning Act 1990 (c. 8) and references to sections are references to sections of that Act;

“the 1991 Act” (“*Deddf 1991*”) means the Planning and Compensation Act 1991 (c. 34);

“the 1995 Act” (“*Deddf 1995*”) means the Environment Act 1995 (c. 25);

“the 1999 Regulations” (“*Rheoliadau 1999*”) means the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I.1999/293);

“any other information” (“ *unrhyw wybodaeth arall*”) means any substantive information provided by an applicant, appellant or operator which is relevant to the determination of the EIA application other than—

- (a) screening information;
- (b) scoping information;
- (c) further information;
- (d) evidence.

“any particular person” (“ *unrhyw berson penodol*”) includes any non-governmental organisation promoting environmental protection;

“the consultation bodies” (“*y cyrff ymgynghori*”) means—

- (a) any body which the relevant mineral planning authority is required to consult or would, if an application for planning permission for the development in question were before it, be required to consult by virtue of article 10 (consultations before the grant of permission) of the Order or of any direction under that article; and

- (b) the following bodies if not included by virtue of sub-paragraph (a)—
- (i) any principal council for the area where the land is situated, if not the relevant mineral planning authority;
 - (ii) the Countryside Council for Wales;
 - (iii) the Environment Agency; and
 - (iv) other bodies designated by statutory provision as having specific environmental responsibilities and which the relevant mineral planning authority or the Welsh Ministers, as the case may be, consider are likely to have an interest in the application;

“the Directive” (“*y Gyfarwydddeb*”) means Council Directive [85/337/EEC](#)(1);

“draft environmental statement” (“*datganiad amgylcheddol drafft*”) has the meaning attributed to it in regulation 17(2), 17(3) and 17(4);

“EEA State” (“*Gwladwriaeth AEE*”) means a State party to the Agreement on the European Economic Area;

“EIA application” (“*cais AEA*”) means an undetermined ROMP application for EIA development;

“EIA development” (“*datblygiad AEA*”) means ROMP development in respect of which a negative screening direction has not been made;

“environmental information” (“*gwybodaeth amgylcheddol*”) means the environmental statement together with any further information, evidence, any other information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the EIA development;

“environmental statement” (“*datganiad amgylcheddol*”) means a statement—

- (a) presented in an appropriate form;
- (b) that includes at least the information referred to in Part 2 of Schedule 2;
- (c) that includes such of the information referred to in Part 1 of Schedule 2 as is specified in the relevant scoping decision;

“exempt development” (“*datblygiad esempt*”) means ROMP development in respect of which the Welsh Ministers have made a direction under regulation 9(1);

“further information” (“*gwybodaeth bellach*”) means, in respect of any particular EIA application, information which the relevant mineral planning authority or the Welsh Ministers reasonably consider—

- (a) relates to the main effects of the EIA development; or
- (b) is of material relevance to the determination of conditions to which the planning permission is to be subject,

and which, having regard in particular to current knowledge and methods of assessment, can reasonably be required to be compiled;

“the land” (“*y tir*”) means the land to which the planning permission which is the subject of the ROMP application relates or, where more than one planning permission is the subject of a ROMP application, the aggregate of the land to which the planning permissions which are the subject of the ROMP application relate;

“by local advertisement” (“*drwy hysbysebu yn lleol*”), in relation to a notice, means—

(1) O.J. No. L175, 5.7.1985, p.40. Council Directive [85/337/EEC](#) was amended by Council Directive [97/11/EC](#) (O.J. No. L73, 14.3.1997, p.5) and further amended by Council Directive [2003/35/EC](#) (O.J. No. L56, 25.6.2005, p.17).

(a) by publication of the notice in a newspaper circulating in the locality in which the land to which the application or appeal relates is situated; and

(b) where the local planning authority maintains a website for the purpose of advertisement of applications, by publication of the notice on the website;

“minerals development” (“*datblygiad mwynau*”) means development consisting of the winning and working of minerals, or involving the depositing of mineral waste;

“negative screening direction” (“*cyfarwyddyd sgrinio negyddol*”) means a direction made pursuant to regulation 9 to the effect that ROMP development is exempt development, or regulation 11, to the effect that ROMP development is not EIA development;

“operator” (“*gweithredwr*”) means, in respect of any particular undetermined ROMP application, any person other than the applicant or appellant, who is entitled to carry out any of the ROMP development which is authorised by the planning permission to which the application relates;

“the Order” (“*y Gorchymyn*”) means the Town and Country Planning (General Development Procedure) Order 1995(2);

“other relevant information” (“*gwybodaeth berthnasol arall*”) has the meaning ascribed to it in regulation 36(5);

“principal council” (“*prif gyngor*”) has the meaning given by sub-section (1) of section 270 (general provisions as to interpretation) of the Local Government Act 1972(3);

“positive screening direction” (“*cyfarwyddyd sgrinio cadarnhaol*”) means a direction made pursuant to regulation 11, to the effect that ROMP development is EIA development;

“register” (“*cofrestr*”) means a register kept pursuant to section 69 (registers of applications etc) and “appropriate register” (“*cofrestr briodol*”) means the register on which particulars of an undetermined ROMP application fall to be placed by virtue of section 69, as applied by regulation 47(1), and regulation 48(1);

“relevant mineral planning authority” (“*awdurdod cynllunio mwynau perthnasol*”) means the body to which it falls or would, but for a direction under paragraph—

(a) 7 of Schedule 2 to the 1991 Act;

(b) 13 of Schedule 13 to the 1995 Act; or

(c) 8 of Schedule 14 to the 1995 Act,

fall to determine the undetermined ROMP application in question;

“the relevant scoping decision” (“*penderfyniad cwmpasu perthnasol*”) means whichever of the following was last adopted or made—

(a) the scoping opinion notified under regulation 12(7);

(b) where the applicant has requested a scoping direction pursuant to regulation 12(8), the scoping direction notified pursuant to regulation 13(12);

(c) the scoping direction notified pursuant to regulation 14(13);

(d) any scoping direction notified under regulation 15(13)

“ROMP application” (“*cais AHGM*”) means an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under paragraph—

(a) 2(2) of Schedule 2 to the 1991 Act (registration of old mining permissions);

(2) S.I. 1995 No. 419; relevant amendments were made by S.I. 1996/525; S.I. 1996/1817; S.I. 1997/858; S.I. 1999/981; the Environment Act 1995 (c. 25); and the Countryside and Rights of Way Act 2000 (c 37).

(3) 1972 c. 70.

- (b) 9(1) of Schedule 13 to the 1995 Act (review of old mineral planning permissions); or
 (c) 6(1) of Schedule 14 to the 1995 Act (periodic review of mineral planning permissions);
 “ROMP development” (“*datblygiad AHGM*”) means development which has yet to be carried out and which is authorised by a planning permission which is the subject of an undetermined ROMP application;

“scoping direction” (“*cyfarwyddyd cwmpasu*”) means a written statement of the opinion of the Welsh Ministers made pursuant to regulation 13, 14 or 15, as to the scope of the information referred to in Part I of Schedule 2 which they consider to be relevant to—

- (a) the specific characteristics of the particular EIA development to which the direction relates;
 (b) the specific characteristics of development of the type concerned;
 (c) the environmental features likely to be affected by the EIA development,
 and which, having regard in particular to current knowledge and methods of assessment, the Welsh Ministers consider can reasonably be required to be compiled;

“scoping information” (“*gwybodaeth gwmpasu*”) has the meaning attributed to it in regulations 12(2), 13(4), 14(5) and 15(5);

“scoping opinion” (“*barn gwmpasu*”) means a written statement of the opinion of the relevant mineral planning authority adopted pursuant to regulation 12 as to the scope of the information referred to in Part I of Schedule 2 which the authority considers to be relevant to—

- (a) the specific characteristics of the particular EIA development to which the opinion relates;
 (b) the specific characteristics of development of the type concerned;
 (c) the environmental features likely to be affected by the EIA development,

and which, having regard in particular to current knowledge and methods of assessment, the authority considers can reasonably be required to be compiled;

“screening direction” (“*cyfarwyddyd sgrinio*”) means a direction made pursuant to regulation 9 to the effect that ROMP development is exempt development, or regulation 11, as to whether ROMP development is EIA development;

“screening information” (“*gwybodaeth sgrinio*”) has the meaning ascribed to it in regulation 11(3);

“sensitive area” (“*ardal sensitif*”) means any of the following—

- (a) land notified under sub-section (1) of section 28 (areas of special scientific interest) of the Wildlife and Countryside Act 1981(4);
 (b) land to which sub-section (3) of section 29 (nature conservation orders) of the Wildlife and Countryside Act 1981 applies;
 (c) an area to which paragraph (u)(ii) in the table in article 10 of the Order applies;
 (d) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949(5);
 (e) a property appearing on the World Heritage List kept under Article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage;
 (f) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(6);

(4) 1981 c. 69.

(5) 1949 c. 97.

(6) 1979 c. 46.

- (g) an area of outstanding natural beauty designated as such by an order made by the Countryside Council for Wales under section 82 (designation of areas) of the Countryside and Rights of Way Act 2000(7) as confirmed by the Welsh Ministers(8);
- (h) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats etc) Regulations 1994(9);

“specified information” (“*gwybodaeth benodedig*”) has the meaning given in regulation 18(6) (a);

“suspension date” (“*dyddiad atal*”) means the date on which, in accordance with any of the following provisions, a planning permission ceases to authorise any minerals development—

- (a) regulation 11(9);
- (b) regulation 12(5);
- (c) regulation 13(10);
- (d) regulation 14(11);
- (e) regulation 15(11);
- (f) regulation 17(8);
- (g) regulation 18(10);
- (h) regulation 18(17);
- (i) regulation 19(2);
- (j) regulation 26(5);
- (k) regulation 27(5);
- (l) regulation 28(7);
- (m) regulation 29(2);

“unauthorised minerals development” (“*datblygiad mwynau diawdurdod*”) means minerals development which has ceased to be authorised by a planning permission pursuant to—

- (a) regulation 11(9);
- (b) regulation 12(5);
- (c) regulation 13(10);
- (d) regulation 14(11);
- (e) regulation 15(11);
- (f) regulation 17(8);
- (g) regulation 18(10);
- (h) regulation 18(17);
- (i) regulation 19(2);
- (j) regulation 26(5);
- (k) regulation 27(5);
- (l) regulation 28(7);
- (m) regulation 29(2);

(7) [2000 c. 37](#).

(8) The 2000 Act conferred the relevant functions on the National Assembly for Wales and those functions are now exercisable by the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(9) [S.I. 1994 No. 2716](#). A relevant amendment was made to regulation 10 by S.I. [2007/1843](#).

“undetermined ROMP application” (“*cais AHGM amhenderfynedig*”) means a ROMP application made before 15 November 2000 which, on or after the date on which these Regulations come into force, falls to be determined by a relevant mineral planning authority or the Welsh Ministers.

(2) References (however expressed) in these Regulations to the referral of an application to the Welsh Ministers for determination are references to the referral of an application to the Welsh Ministers⁽¹⁰⁾ under any of the following—

- (a) paragraph 7(1) of Schedule 2 to the 1991 Act (reference of applications to Secretary of State));
- (b) paragraph 13(1) of Schedule 13 to the 1995 Act (reference of applications to the Secretary of State);
- (c) paragraph 8(1) of Schedule 14 to the 1995 Act (reference of applications to Secretary of State);
- (d) regulation 6 (default powers of the Welsh Ministers).

(3) References (however expressed) in these Regulations to an appeal are references to an appeal under—

- (a) paragraph 5(2) of Schedule 2 to the 1991 Act, paragraph 11(1) of Schedule 13 to the 1995 Act or paragraph 9(1) of Schedule 14 to the 1995 Act (right of appeal); or
- (b) the provisions mentioned in sub-paragraph (a) as applied by regulation 45.

(4) References in these Regulations to “suspension of minerals development” (“*atal datblygu mwynau*”) are references to a planning permission ceasing to authorise any minerals development pursuant to any of the following—

- (a) regulation 11(9);
- (b) regulation 12(5);
- (c) regulation 13(10);
- (d) regulation 14(11);
- (e) regulation 15(11);
- (f) regulation 17(8);
- (g) regulation 18(10);
- (h) regulation 18(17);
- (i) regulation 19(2);
- (j) regulation 26(5);
- (k) regulation 27(5);
- (l) regulation 28(7);
- (m) regulation 29(2).

(5) Subject to paragraph (6), expressions used both in these Regulations and in the Act have the same meaning for the purposes of these Regulations as they have for the purposes of the Act.

(6) Expressions used both in these Regulations and in the Directive (whether or not also used in the Act) have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

⁽¹⁰⁾ The relevant functions of the Secretary of State under the 1991 and 1995 Acts so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999 No. 672 and are now exercisable by the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(7) In these Regulations any reference to a Council Directive is a reference to that Directive as amended at the date these Regulations were made.

Prohibition on determination without consideration of environmental information

3. A relevant mineral planning authority or the Welsh Ministers must not determine an EIA application or an appeal in relation to an EIA application unless they have first taken the environmental information into consideration, and they must state in their decision that they have done so.

Guidance by the Welsh Ministers

4.—(1) The Welsh Ministers may give guidance to relevant mineral planning authorities as to the exercise of authorities' functions pursuant to these Regulations.

(2) A relevant mineral planning authority must have regard to any guidance given under paragraph (1).

Extension of time periods within which steps must be taken by mineral planning authorities

5.—(1) Where a relevant mineral planning authority—

(a) is required to take any step within a period specified under, or agreed in accordance with, these Regulations (“the specified period”); and

(b) reasonably concludes that it will be unable to take the step within the specified period,

the relevant mineral planning authority may make a written request to the Welsh Ministers to make a direction under this regulation.

(2) A request made under paragraph (1) must—

(a) identify the step which the authority is required to take;

(b) state the date by which the authority is required to take the step in question;

(c) be accompanied by a written statement of the authority’s reasons for concluding that it will be unable to take the step in question within the specified period;

(d) state a date by which the authority proposes to take the step in question;

(e) be accompanied by a written statement of the authority’s reasons for concluding that it will be able to take the step in question by the date stated pursuant to sub-paragraph (d); and

(f) be accompanied either by written confirmation that the relevant mineral planning authority has complied with paragraph (3), or by the authority’s written explanation as to why it was unable, or why it was not possible, to comply with that paragraph.

(3) Before submitting a request under paragraph (1) a relevant mineral planning authority must notify the applicant in writing—

(a) of its intention to submit a request to the Welsh Ministers under paragraph (1);

(b) of the matters set out in paragraph (2) (other than the matter referred to in paragraph (2)(f));

(c) that the applicant may submit representations to the Welsh Ministers within 14 days of the date of the notification; and

(d) the effect of paragraph (10).

(4) The Welsh Ministers may make a direction under this regulation specifying an alternative period within which the step in question is to be taken if, having considered a request made pursuant to paragraph (1), any representations made by the applicant and such other matters as they consider relevant, the Welsh Ministers are satisfied that—

- (a) the relevant mineral planning authority cannot reasonably be required to take the step in question within the specified period; and
 - (b) the authority's request under paragraph (1) did not arise as a result of any fault or intention of the authority.
- (5) The Welsh Ministers must, as soon as reasonably practicable following the making of a direction under paragraph (4), send to the relevant mineral planning authority and to the applicant, a copy of that direction.
- (6) If the Welsh Ministers are not satisfied as to both of the matters mentioned in paragraph (4) (a) and (b) they must decline to make a direction under this regulation.
- (7) The Welsh Ministers must, as soon as reasonably practicable following the taking of a decision pursuant to paragraph (6), give written notification to the relevant mineral planning authority of that decision and of the reasons for it.
- (8) The Welsh Ministers must send a copy of any notification given pursuant to paragraph (7) to the applicant.
- (9) A direction made under this regulation may specify such alternative period as the Welsh Ministers consider appropriate.
- (10) Upon receipt by the Welsh Ministers of a duly made request under paragraph (1), the specified period within which the step identified pursuant to paragraph (2)(a) is to be taken, is extended until—
- (a) where the Welsh Ministers make a direction specifying an alternative period, the date on which that alternative period expires; or
 - (b) where the Welsh Ministers decline to make a direction under this regulation, the date falling 14 days after the latest of the following dates—
 - (i) the date on which the specified period ends;
 - (ii) the date on which written notification is given pursuant to paragraph (7);
 - (iii) the date on which any copy of a written notification is sent to the applicant pursuant to paragraph (8).
- (11) A direction made under this regulation may be amended or revoked by a further direction.
- (12) The Welsh Ministers must notify the mineral planning authority and the applicant of any direction, or decision to decline to make a direction, made under this regulation.

Default powers of the Welsh Ministers

- 6.—(1) Where, in relation to an EIA application, a relevant mineral planning authority—
- (a) is required to take any step within a particular period; and
 - (b) does not take the step in question within the particular period,
- the Welsh Ministers may direct that the EIA application in question be referred to them instead of being dealt with by the relevant mineral planning authority.
- (2) Where the Welsh Ministers have given a direction under this regulation and the circumstances mentioned in paragraph (3) apply, the Welsh Ministers may recover from the relevant mineral planning authority such costs or expenses as they have reasonably incurred in dealing with the EIA application to which the direction relates.
- (3) The circumstances referred to in paragraph (2) are that the Welsh Ministers consider on the evidence available to them, that the failure of the authority to take the step in question within the particular period was brought about as a result of the fault or intention of the relevant mineral planning authority.

(4) Before giving a direction under this regulation the Welsh Ministers must consult the relevant mineral planning authority and the applicant.

(5) Any EIA application in respect of which a direction under this regulation is given must be referred to the Welsh Ministers accordingly.

(6) For the purposes of this regulation the reference to a particular period is a reference to any of the following—

- (a) a period specified under these Regulations;
- (b) a period agreed in writing in accordance with the provisions of these Regulations;
- (c) where a relevant mineral planning authority has made a written request under regulation 5(1), the period calculated in accordance with regulation 5(10).

(7) Before determining the application the Welsh Ministers may, if either the applicant or the relevant mineral planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Welsh Ministers for the purpose.

(8) The decision of the Welsh Ministers on the application is final.

(9) The powers conferred by this regulation are in addition to, and not in derogation from, any other powers of the Welsh Ministers including in particular, the power conferred by section 77.

Welsh Ministers' powers to require returns from relevant mineral planning authorities

7.—(1) The Welsh Ministers may by notice in writing, require a relevant mineral planning authority to provide such information in relation to the exercise of the authority's functions under these Regulations as the Welsh Ministers consider appropriate.

(2) Information required in accordance with a written notification given under paragraph (1) must be provided by a relevant mineral planning authority within such period as may be specified in the notice, or within such longer period as may be agreed in writing with the Welsh Ministers.

Format of environmental statements, information, evidence etc.

8. An environmental statement and any further information or evidence required to be submitted under these Regulations must be submitted in paper and electronic format and references to copies of any such statement, information or evidence are to be construed accordingly.