
WELSH STATUTORY INSTRUMENTS

2016 No. 53

The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016

PART 1

General

Title, commencement and application

1.—(1) The title of these Regulations is the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 and they come into force on 1 March 2016.

(2) These Regulations apply to all land in Wales.

Interpretation

2. In these Regulations—

“the 1990 Act” (“*Deddf 1990*”) means the Town and Country Planning Act 1990;

“the 1995 Order” (“*Gorchymyn 1995*”) means the Town and Country Planning (General Permitted Development) Order 1995(1); and

“gas” (“*nwy*”) includes natural gas.

PART 2

Developments of national significance: specified criteria

Developments of national significance: general

3.—(1) Development is of national significance for the purposes of section 62D(3) of the 1990 Act if it consists of any of the following—

- (a) the construction, extension or alteration of a generating station that generates electricity;
- (b) development relating to underground gas storage facilities;
- (c) the construction or alteration of an LNG facility;
- (d) the construction or alteration of a gas reception facility;
- (e) airport-related development;
- (f) the construction or alteration of a railway;
- (g) the construction or alteration of a rail freight interchange;

- (h) the construction or alteration of a dam or reservoir;
 - (i) development relating to the transfer of water resources;
 - (j) the construction or alteration of a waste water treatment plant or of infrastructure for the transfer or storage of waste water;
 - (k) the construction or alteration of a hazardous waste facility.
- (2) Paragraph (1) is subject to paragraphs (3) and (4).
- (3) Development is not of national significance for the purposes of section 62D(3) of the 1990 Act if it is permitted by virtue of article 3 of, and Schedule 2 to, the 1995 Order(2).
- (4) Paragraph (1) is subject to regulations 4 to 14.

Generating stations

4.—(1) The construction of a generating station is within regulation 3(1)(a) only if the generating station is expected to have (when constructed) an installed generating capacity of between 10 and 50 megawatts.

(2) The extension or alteration of a generating station is within regulation 3(1)(a) only if the effect of the extension or alteration is expected to increase the installed generating capacity by at least 10 megawatts, but not so that the installed generating capacity exceeds 50 megawatts.

(3) In this regulation—

“generating station” (“*gorsaf gynhyrchu*”) means a station, plant or buildings that generate electricity;

“installed generating capacity” (“*gallu cynhyrchu gosodedig*”) means the maximum capacity of electricity generation (in megawatts) at which that generating station could be operated for a sustained period without damage being caused to it (assuming the source of energy used to generate electricity is available without interruption).

Underground gas storage facilities

5.—(1) Development relating to underground gas storage facilities is within regulation 3(1)(b) only if the development is within paragraphs (2), (3), (4) or (6) of this regulation.

(2) Development is within this paragraph if it is the carrying out of operations for the purpose of creating underground facilities for the storage of gas in cavities or in natural porous strata and one of the conditions in paragraph (5) is met.

(3) Development is within this paragraph if—

- (a) it is starting to use underground facilities for the storage of gas other than in natural porous strata;
- (b) the proposed developer is a gas transporter; and
- (c) one of the conditions in paragraph (5) is met.

(4) Development is within this paragraph if—

- (a) it is starting to use underground facilities for the storage of gas in cavities or in natural porous strata;
- (b) the proposed developer is not a gas transporter; and
- (c) one of the conditions in paragraph (5) is met.

(2) Article 3 was amended by: regulations 34(1) and 35(3) and (4) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999/293); regulation 15(3) of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (S.I. 1999/1793) and section 76 of the Utilities Act 2000 (c. 27). There are amendments to Schedule 2 not relevant to these Regulations.

- (5) The conditions are—
- (a) the working capacity of the facilities is expected to be at least 43 million standard cubic metres;
 - (b) the maximum flow rate of the facilities is expected to be at least 4.5 million standard cubic metres per day.
- (6) Development is within this paragraph if—
- (a) it is the carrying out of operations for the purpose of altering underground facilities for the storage of gas in cavities or in natural porous strata, and
 - (b) the expected effect of the alteration is to increase—
 - (i) the working capacity of the facilities by at least 43 million standard cubic metres, or
 - (ii) the maximum flow rate of the facilities by at least 4.5 million standard cubic metres per day.
- (7) In this regulation—
- “maximum flow rate” (“*cyfradd llif uchaf*”) means the maximum rate at which gas is able to flow out of the facilities, on the assumption that—
- (a) the facilities are filled to maximum capacity, and
 - (b) the rate is measured after any processing of gas required on its recovery from storage;
- “working capacity” (“*cynhwysedd gweithredol*”) means the capacity of the facilities for storage of gas underground, ignoring any capacity for storage of cushion gas; and
- “cushion gas” (“*nwy clustogi*”) means gas which is kept in underground facilities for the purpose of enabling other gas stored there to be recovered from storage.

Facilities for liquid natural gas (LNG)

- 6.—(1)** The construction of an LNG facility is within regulation 3(1)(c) only if (when constructed)—
- (a) the storage capacity of the facility is expected to be at least 43 million standard cubic metres, or
 - (b) the maximum flow rate of the facility is expected to be at least 4.5 million standard cubic metres per day.
- (2) The alteration of an LNG facility is within regulation 3(1)(c) only if the expected effect of the alteration is to increase —
- (a) the storage capacity of the facility by at least 43 million standard cubic metres, or
 - (b) the maximum flow rate of the facility by at least 4.5 million standard cubic metres per day.
- (3) In this regulation—
- “maximum flow rate” (“*cyfradd llif uchaf*”) means the maximum rate at which gas is able to flow out of the facility, on the assumption that—
- (a) the facility is filled to maximum capacity, and
 - (b) the rate is measured after regasification of the liquid natural gas and any other processing required on the recovery of the gas from storage;
- “LNG facility” (“*cyfleuster LNG*”) means a facility for—
- (a) the reception of liquid natural gas from outside Wales,
 - (b) the storage of that gas, and
 - (c) the regasification of that gas;

“storage capacity” (“*cynhwysedd storio*”) means the capacity of the facility for storage of liquid natural gas measured as if the gas were stored in regasified form.

Gas reception facilities

7.—(1) The construction of a gas reception facility is within regulation 3(1)(d) only if (when constructed)—

- (a) the facility is within paragraph (3), and
 - (b) the maximum flow rate of the facility is expected to be at least 4.5 million standard cubic metres per day.
- (2) The alteration of a gas reception facility is within regulation 3(1)(d) only if—
- (a) the facility is within paragraph (3), and
 - (b) the expected effect of the alteration is to increase the maximum flow rate of the facility by at least 4.5 million standard cubic metres per day.
- (3) A gas reception facility is within this paragraph if—
- (a) the gas handled by the facility does not originate in Wales, England, or Scotland,
 - (b) the gas does not arrive at the facility from England or Scotland, and
 - (c) the gas has not already been handled at another facility after its arrival in Wales.

(4) In this regulation—

“maximum flow rate” (“*cyfradd llif uchaf*”) means the maximum rate at which gas is able to flow out of the facility;

“gas reception facility” (“*cyfleuster derbyn nwy*”) means a facility for—

- (a) the reception of natural gas in gaseous form from outside Wales, and
- (b) the handling of natural gas (other than its storage).

Airports

8.—(1) Airport-related development is within regulation 3(1)(e) only if the development is—

- (a) the construction of an airport within paragraph (2),
- (b) the alteration of an airport within paragraph (3), or
- (c) an increase in the permitted use of an airport within paragraph (4).

(2) The construction of an airport is within this paragraph only if the airport is expected (when constructed) to be capable of providing—

- (a) air passenger transport services for at least one million passengers per year, or
- (b) air cargo transport services for at least 5,000 air transport movements of cargo aircraft per year.

(3) The alteration of an airport is within this paragraph only if the alteration is expected to increase—

- (a) the number of passengers for whom the airport is capable of providing air passenger transport services by at least one million per year, or
- (b) the number of air transport movements of cargo aircraft for which the airport is capable of providing air cargo transport services by at least 5,000 per year.

(4) An increase in the permitted use of an airport is within this paragraph only if it is at least—

- (a) one million per year in the number of passengers for whom the airport is permitted to provide air passenger transport services, or

- (b) 5,000 per year in the number of air transport movements of cargo aircraft for which the airport is permitted to provide air cargo transport services.

(5) In this regulation—

“air cargo transport services” (“*gwasanaethau cludiant nwyddau awyr*”) means services for the carriage of cargo by air;

“air passenger transport services” (“*gwasanaethau cludiant teithwyr awyr*”) means services for the carriage of passengers by air;

“air transport movement” (“*symudiad cludiant awyr*”) means the landing or take-off of an aircraft;

“alteration” (“*addasu*”/“*addasiad*”) includes the construction, extension or alteration of—

- (a) a runway at the airport,
- (b) a building at the airport, and
- (c) a radar or radio mast, antenna or other apparatus at the airport;

“cargo” (“*nwyddau*”) includes mail;

“cargo aircraft” (“*awyren nwyddau*”) means an aircraft which is—

- (a) designed to transport cargo but not passengers, and
- (b) engaged in the transport of cargo on commercial terms.

Railways

9.—(1) The construction of a railway is within regulation 3(1)(f) only if the railway (when constructed)—

- (a) is wholly or partly in Wales (subject to paragraph (2)),
- (b) is part of a network operated by an approved operator, and
- (c) includes a stretch of track that is a continuous length of more than two kilometres;

subject to paragraph (5).

(2) In the case of a railway that (when constructed) is partly in Wales, the construction of the railway is within regulation 3(1)(f) only to the extent that a continuous length of more than two kilometres of track is in Wales.

(3) The alteration of a railway is within regulation 3(1)(f) only if—

- (a) the part of the railway to be altered is wholly or partly in Wales (subject to paragraph (4)),
- (b) the railway is part of a network operated by an approved operator, and
- (c) the alteration of the railway includes laying a stretch of track that is of a continuous length of more than two kilometres;

subject to paragraph (5).

(4) In the case of a railway that (when altered) is partly in Wales the alteration of the railway is within regulation 3(1)(f) only to the extent that the length of the altered track in Wales is of a continuous length of more than two kilometres.

(5) Construction or alteration of a railway is not within regulation 3(1)(f) to the extent that the railway forms part (or will when constructed form part) of a rail freight interchange.

(6) In this regulation—

“altered track” (“*trac addasedig*”) includes additional, replacement or deviated track;

“approved operator” (“*gweithredwr cymeradwy*”) means a person who—

(a) is authorised to be the operator of a network by a licence granted under section 8 of the Railways Act 1993(3) (licences for operation of railway assets), or

(b) is a wholly-owned subsidiary of a company which is such a person.

“network” (“*rhwydwaith*”) has the meaning given by section 83(1) of the Railways Act 1993(4);

“railway” means—

(a) a railway;

(b) a tramway; or

(c) a transport system which uses another mode of guided transport but which is not a trolley vehicle system;

“wholly-owned subsidiary” (“*is-gwmni ym mherchnogaeth lwyr*”) has the meaning given by the Companies Act 2006(5).

Rail freight interchanges

10.—(1) The construction of a rail freight interchange is within regulation 3(1)(g) only if (when constructed) each of the conditions in paragraphs (3) to (5) is expected to be met in relation to it.

(2) The alteration of a rail freight interchange is within regulation 3(1)(g) only if (following the alteration) each of the conditions in paragraphs (3) to (5) is expected to be met in relation to it.

(3) The first condition is that the rail freight interchange is capable of handling—

- (a) consignments of goods from more than one consignor and to more than one consignee, and
- (b) at least two goods trains per day.

(4) The second condition is that the rail freight interchange includes warehouses to which goods can be delivered from the railway network either directly or by means of another form of transport.

(5) The third condition is that the rail freight interchange is not part of a military establishment.

(6) In this regulation—

“goods train” (“*trên nwyddau*”) means a train that (ignoring any locomotive) consists of items of rolling stock designed to carry goods;

“military establishment” (“*sefydliad milwrol*”) means an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence;

and the following terms have the meanings given by section 83(1) of the Railways Act 1993—

“network” (“*rhwydwaith*”);

“rolling stock” (“*stoc rholio*”);

“train” (“*trên*”).

Dams and reservoirs

11.—(1) The construction of a dam or reservoir is within regulation 3(1)(h) only if the volume of water to be held back by the dam or stored in the reservoir is expected to exceed 10 million cubic metres.

(3) 1993 c. 43. Section 8 was amended by: section 216 of, and paragraphs 1 and 4 of Schedule 17 to, the Transport Act 2000 (c. 38); section 16 of, and paragraphs 1 and 3 of Schedule 2 to, the Railways and Transport Safety Act 2003 (c. 20); and by sections 1 and 59 of, and paragraph 3 of Part 1 of Schedule 1, and Part 1 of Schedule 13 to, the Railways Act 2005 (c. 14).

(4) There are amendments to section 83(1) not relevant to this regulation.

(5) 2006 c. 46. See section 1159.

(2) The alteration of a dam or reservoir is within regulation 3(1)(h) only if the additional volume of water to be held back by the dam or stored in the reservoir as a result of the alteration is expected to exceed 10 million cubic metres.

Transfer of water resources

12.—(1) Development relating to the transfer of water resources is within regulation 3(1)(i) only if—

- (a) the development is carried out by one or more water undertakers,
- (b) the volume of water to be transferred as a result of the development is expected to exceed 100 million cubic metres per year,
- (c) the development enables the transfer of water resources—
 - (i) between river basins in Wales,
 - (ii) between water undertakers' areas in Wales, or
 - (iii) between a river basin in Wales and a water undertaker's area in Wales, and
- (d) the development does not relate to the transfer of drinking water.

(2) In this regulation—

“river basin” (“*basn afon*”) means an area of land drained by a river and its tributaries;

“water undertaker” (“*ymgymerwr dŵr*”) means a company appointed as a water undertaker under section 6 of the Water Industry Act 1991 (appointment of relevant undertakers)⁽⁶⁾.

“water undertaker's area” (“*ardal ymgymerwr dŵr*”) means the area for which a water undertaker is appointed under that Act.

Waste water treatment plants

13.—(1) The construction of a waste water treatment plant is within regulation 3(1)(j) only if the treatment plant (when constructed) is expected to have a capacity exceeding a population equivalent of 500,000.

(2) The construction of infrastructure for the transfer or storage of waste water is within regulation 3(1)(j) only if—

- (a) the main purpose of the infrastructure is—
 - (i) the transfer of waste water for treatment, or
 - (ii) the storage of waste water prior to treatment,

or both, and

- (b) the infrastructure is expected to have a capacity for the storage of waste water exceeding 350,000 cubic metres.

(3) The alteration of a waste water treatment plant is within regulation 3(1)(j) only if the effect of the alteration is expected to be to increase by more than a population equivalent of 500,000 the capacity of the plant.

(4) The alteration of infrastructure for the transfer or storage of waste water is within regulation 3(1)(j) only if—

- (a) the main purpose of the infrastructure is—
 - (i) the transfer of waste water for treatment, or

⁽⁶⁾ 1991 c. 56. Section 6 was amended by section 36 of the Water Act 2003 (c. 37). There are other amendments to section 6 not relevant to these Regulations.

- (ii) the storage of waste water prior to treatment,
- or both, and
- (b) the effect of the alteration is expected to be to increase the capacity of the infrastructure for the storage of waste water by more than 350,000 cubic metres.
- (5) In this regulation—
- “waste water” (“*dŵr gwastraff*”) includes domestic waste water, industrial waste water and urban waste water;

and the following terms have the meanings given by regulation 2(1) of the Urban Waste Water Treatment (England and Wales) Regulations 1994(7)—

- “domestic waste water” (“*dŵr gwastraff domestic*”);
- “industrial waste water” (“*gwastraff diwydiannol*”);
- “population equivalent” (“*cyfwerth poblogaeth*”);
- “urban waste water” (“*dŵr gwastraff trefol*”).

Hazardous waste facilities

- 14.**—(1) The construction of a hazardous waste facility is within regulation 3(1)(k) only if—
- (a) the main purpose of the facility is the final disposal or recovery of hazardous waste, and
 - (b) the facility is expected to have the capacity specified in paragraph (2).
- (2) The capacity is—
- (a) in the case of the disposal of hazardous waste by landfill or in a deep storage facility, more than 100,000 tonnes per year;
 - (b) in any other case, more than 30,000 tonnes per year.
- (3) The alteration of a hazardous waste facility is within regulation 3(1)(k) only if—
- (a) the main purpose of the facility is the final disposal or recovery of hazardous waste, and
 - (b) the alteration is expected to increase the capacity of the facility—
 - (i) in the case of the disposal of hazardous waste by landfill or in a deep storage facility, by more than 100,000 tonnes per year;
 - (ii) in any other case, by more than 30,000 tonnes per year.
- (4) In this regulation—
- “deep storage facility” (“*cyfleuster storio dwfn*”) means a facility for the storage of waste underground in a deep geological cavity;
- and the following terms have the same meanings as in the Hazardous Waste (England and Wales) Regulations 2005(8)—
- “disposal” (“*gwaredu*”);
 - “hazardous waste” (“*gwastraff peryglus*”);
 - “recovery” (“*adfer*”).

(7) [S.I. 1994/2841](#). There are amendments to regulation 2(1) not relevant to these Regulations.

(8) [S.I. 2005/894](#). See regulation 5.

PART 3

Prescribed Secondary Consents

Prescribed consents

15. The consents listed in the Schedule are prescribed for the purposes of the 1990 Act.

Highways Orders: consequential amendments

16.—(1) Section 252 of the 1990 Act is amended as follows.

(2) After subsection (3) insert—

“(3A) Where the Welsh Ministers are proposing to make an order under section 247, 248 or 251 in connection with development of national significance—

- (a) subsection (1) has effect as if for “shall” there were substituted “may”;
- (b) subsections (2) and (3) apply only if the Welsh Ministers publish a notice under subsection (1).”

(3) After subsection (6A) insert—

“(6B) Where the Welsh Ministers are proposing to make an order under section 247, 248 or 251 in connection with development of national significance, subsections (6C) and (6D) apply in place of subsections (4) to (6).

(6C) The Welsh Ministers may cause a local inquiry to be held if—

- (a) they have published a notice under subsection (1)(b),
- (b) before the end of the period of 28 days mentioned in subsection (1)(b) they receive an objection from a person mentioned in subsection (2)(a) to (b), or from any other person appearing to them to be affected by the order, and
- (c) the objection is not withdrawn.

(6D) Subsections (2) and (3) of section 250 of the Local Government Act 1972 and section 322C apply in relation to an inquiry caused to be held by the Welsh Ministers under subsection (6C).”

(4) In subsection (12), before the definition of “the relevant area” insert—

““development of national significance” is to be interpreted in accordance with section 62D;”.

27 January 2016

Carl Sargeant
Minister for Natural Resources, one of the Welsh
Ministers