

---

WELSH STATUTORY INSTRUMENTS

---

**2016 No. 58**

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

PART 10

Unauthorised Development

**Interpretation**

**40.** In this Part—

“unauthorised EIA development” (*datblygiad AEA anawdurdodedig*) means EIA development which is the subject of an enforcement notice under section 172 of the 1990 Act (issue of enforcement notice)(1); and

“ground (a) appeal” (*apêl sail (a)*) means an appeal brought under section 174(2)(a) of the 1990 Act.

**Prohibition on the grant of planning permission for unauthorised EIA development**

**41.** The Welsh Ministers or an inspector must not grant planning permission or subsequent consent under section 177(1) of the 1990 Act (grant or modification of planning permission on appeals against enforcement notices)(2) in respect of unauthorised EIA development unless the Welsh Ministers or inspector has first taken the environmental information into consideration, and they must state in the decision that they have done so.

**Screening opinions**

**42.—(1)** Where it appears to the local planning authority by whom or on whose behalf an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include Schedule 1 development or Schedule 2 development they must, before the enforcement notice is issued, adopt a screening opinion.

(2) Where it appears to the local planning authority by whom or on whose behalf an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include EIA development they must serve with a copy of the enforcement notice a notice (“regulation 42 notice”) which must—

(a) include the screening opinion required by paragraph (1) and the statement required by regulation 4(7); and

---

(1) Section 172 was substituted by section 5 of the 1991 Act.

(2) Section 177 was amended by sections 6(3) and 32 of, and paragraph 24 of Schedule 7 to, the 1991 Act; section 123(1), (6) of the Localism Act 2011 (c. 20). There is another amendment which is not relevant to this instrument.

- (b) require a person who gives notice of an appeal under section 174 of the 1990 Act<sup>(3)</sup> to submit to the Welsh Ministers with the notice two copies of an environmental statement relating to that EIA development.
- (3) The authority by whom a regulation 42 notice has been served must send a copy of it to—
  - (a) the Welsh Ministers;
  - (b) the consultees; and
  - (c) any particular person of whom the authority is aware, who is likely to be affected by, or has an interest in, the regulation 42 notice.
- (4) Where an authority provide the Welsh Ministers with a copy of a regulation 42 notice they must include with it a list of the other persons to whom a copy of the notice has been or is to be sent.

### Screening directions

- 43.**—(1) Any person on whom a regulation 42 notice is served may, within 21 days beginning with the date the notice is served, apply to the Welsh Ministers for a screening direction.
- (2) An application for a screening direction must be accompanied by—
    - (a) a copy of the regulation 42 notice;
    - (b) a copy of the enforcement notice which accompanied it; and
    - (c) such other information or representations as the applicant may wish to provide or make.
  - (3) At the same time as applying to the Welsh Ministers, the applicant must send to the authority by whom the regulation 42 notice was served, a copy of the application and of any information or representations provided or made in accordance with paragraph (2)(c).
  - (4) If the Welsh Ministers consider that the information provided in accordance with paragraph (2)(a) is insufficient to make a direction, they must notify the applicant and the authority of the matters in respect of which additional information is required; and the information so requested must be provided by the applicant within such reasonable period as may be specified in the notice.
  - (5) The Welsh Ministers must send a copy of the direction to the applicant.
  - (6) Where the Welsh Ministers direct that the matters which are alleged to constitute the breach of planning control do not comprise or include EIA development, they must send a copy of the direction to every person to whom a copy of the regulation 42 notice was sent.

### Provision of information

- 44.**—(1) The relevant planning authority and any person, other than the Welsh Ministers, to whom a copy of the regulation 42 notice has been sent (“the regulation 42 consultee”) must, if requested by the person on whom the regulation 42 notice was served, enter into consultation with that person to determine whether the regulation 42 consultee has in their possession any information which that person or the regulation 42 consultee considers relevant to the preparation of an environmental statement and if they have, the regulation 42 consultee must make any such information available to that person.
- (2) Regulation 15(5) applies to information under paragraph (1) as it applies to any information falling within regulation 15(4).

(3) Section 174 was amended by section 6(1) of, and paragraph 22 of Schedule 7 to, the 1991 Act; the Planning (Wales) Act 2015, section 46; and by S.I.2003/956. See also section 177(5) which was amended by paragraph 24 of Schedule 7 to the 1991 Act.

### **Appeal to the Welsh Ministers without a screening opinion or screening direction**

**45.**—(1) Where on consideration of an appeal under section 174 of the 1990 Act it appears to the Welsh Ministers that the matters alleged to constitute the breach of planning control comprise or include Schedule 1 development or Schedule 2 development, they must, before any notice is served pursuant to regulation 46, make a screening direction.

(2) Where an inspector is dealing with an appeal under section 174 of the 1990 Act and a question arises as to whether the matters alleged to constitute the breach of planning control comprise or include Schedule 1 development or Schedule 2 development, the inspector must refer that question to the Welsh Ministers.

(3) Before receiving a screening direction the inspector may not determine the application which is deemed to have been made by virtue of the appeal under section 174 of the 1990 Act (“the deemed application”) except to refuse that application.

(4) Where a question is referred under paragraph (2), the Welsh Ministers must make a screening direction within 21 days beginning with the date on which the question was referred or such longer period as may be reasonably required.

(5) The Welsh Ministers must send a copy of any screening direction made pursuant to paragraph (4) to the inspector.

(6) If the Welsh Ministers consider that sufficient information to make a screening direction has not been provided, they must give notice to the applicant and the authority by whom the regulation 42 notice was served, of the matters in respect of which additional information is required and the information so requested must be provided by the applicant within such reasonable period as may be specified in the notice.

(7) If an appellant to whom notice has been given under paragraph (6) fails to comply with the requirements of that notice—

- (a) the application which is deemed to have been made by virtue of the appeal made under section 174 of the 1990 Act; and
- (b) the appeal in so far as it is a ground (a) appeal,

lapse at the end of the period specified in the notice.

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

**46.**—(1) The procedure in paragraph (2) applies where—

- (a) the Welsh Ministers or an inspector are considering an appeal under section 174 of the 1990 Act;
- (b) the matters which are alleged to constitute the breach of planning control comprise or include unauthorised EIA development; and
- (c) the documents submitted for the purposes of the appeal do not include a statement referred to by the appellant as an environmental statement for the purposes of these Regulations.

(2) The procedure is—

- (a) the Welsh Ministers must, within the period of 21 days beginning with the day on which the appeal is received, or such longer period as may be reasonably required, notify the appellant of the requirements of sub-paragraph (c) below; but this is subject to sub-paragraph (b);
- (b) notice need not be given under sub-paragraph (a) where the appellant has submitted an environmental statement to the Welsh Ministers for the purposes of an appeal under section 78 of the 1990 Act (right to appeal against planning decisions and failure to take such decisions) which—

- (i) relates to the development to which the appeal under section 174 of the 1990 Act relates; and
- (ii) is to be determined at the same time as the appeal under section 174 of the 1990 Act; and that statement, any further information, any other information and the representations (if any) made in relation to it must be treated as the environmental information for the purpose of regulation 41;
- (c) the appellant must, within the period specified in the notice or such longer period as the Welsh Ministers may allow, submit to the Welsh Ministers two copies of an environmental statement relating to the unauthorised EIA development in question;
- (d) the Welsh Ministers must send to the relevant planning authority a copy of any notice sent to the appellant under sub-paragraph (a);
- (e) if an appellant to whom notice has been given under sub-paragraph (a) fails to comply with the requirements of sub-paragraph (c), the deemed application and any ground (a) appeal lapse at the end of the period specified or allowed (as the case may be);
- (f) as soon as reasonably practicable after the occurrence of the lapse described in subparagraph (e), the Welsh Ministers must notify the appellant and the local planning authority that the deemed application and any ground (a) appeal have lapsed.

#### **Procedure where an environmental statement is submitted to the Welsh Ministers**

**47.** Where the Welsh Ministers receive (otherwise than as mentioned in regulation 46(2)(b)) an environmental statement in connection with an enforcement appeal, they must—

- (a) send a copy of that statement to the relevant planning authority, advise the authority that the statement will be taken into consideration in determining the deemed application and the ground (a) appeal (if any), and inform them that they may make representations;
- (b) notify the persons to whom a copy of the relevant regulation 42 notice was sent that the statement will be taken into consideration in determining the deemed application and the ground (a) appeal (if any), and inform them that they may make representations and that, if they wish to receive a copy of the statement or any part of it, they must notify the Welsh Ministers of their requirements within 7 days of the receipt of the Welsh Ministers' notice; and
- (c) respond to requirements notified in accordance with paragraph (b) by providing a copy of the statement or of the part requested (as the case may be).

#### **Further information and evidence respecting environmental statements**

**48.** Regulation 22(1) and (10) apply to statements provided in accordance with this Part with the following modifications—

- (a) where the Welsh Ministers or an inspector notify the appellant under regulation 22(1), the appellant must provide the further information within such period as the Welsh Ministers or the inspector may specify in the notice or such longer period as the Welsh Ministers or the inspector may allow;
- (b) if an appellant to whom a notice has been given under paragraph (a) fails to provide the further information within the period specified or allowed, the deemed application and the ground (a) appeal (if any) lapse at the end of that period.

### **Publicity for environmental statements or further information**

**49.**—(1) Where an authority receive a copy of a statement or further information by virtue of regulation 47(a) or any other information they must publish by local advertisement a notice stating—

- (a) the name of the appellant and that the enforcement notice has been appealed to the Welsh Ministers;
- (b) the address or location of the land to which the notice relates and the nature of the development;
- (c) sufficient information to enable any planning permission for the development to be identified;
- (d) that a copy of the statement, further information or any other information and of any planning permission may be inspected by members of the public at all reasonable hours;
- (e) an address in the locality in which the land is situated at which the statement or further information or any other information may be inspected, and the latest date on which it will be available for inspection (being a date not less than 21 days later than the date on which the notice is published);
- (f) that any person wishing to make representations about any matter dealt with in the statement or further information or any other information should make them, no later than 21 days after the date stated in accordance with sub-paragraph (e), to the Welsh Ministers; and
- (g) the address to which any such representations should be sent.

(2) The authority must, as soon as practicable after publication of a notice in accordance with paragraph (1), send to the Welsh Ministers a copy of the notice certified by or on behalf of the authority as having been published by local advertisement on a date specified in the certificate.

(3) Neither the Welsh Ministers receiving a certificate under paragraph (2) nor an inspector may determine the deemed application or the ground (a) appeal in respect of the development to which the certificate relates until the expiry of 21 days from the date stated in the published notice as the last date on which the statement or further information was available for inspection.

### **Public inspection of documents**

**50.**—(1) The relevant planning authority must make available for public inspection at all reasonable hours at the place where the appropriate register (or relevant part of that register) is kept, a copy of—

- (a) every regulation 42 notice given by the authority;
- (b) every notice received by the authority under regulation 46(2)(d); and
- (c) every statement and all further information received by the authority under regulation 47(a);

and copies of those documents must remain so available for a period of 2 years or until they are entered in Part 2 of the register in accordance with paragraph (2), whichever is the sooner.

(2) Where particulars of any planning permission granted by the Welsh Ministers or an inspector under section 177 of the 1990 Act are entered in Part 2 of the register(4), the relevant planning authority must take steps to secure that that Part also contains a copy of any of the documents referred to in paragraph (1) as are relevant to the development for which planning permission has been granted.

---

(4) See section 177(8) of the 1990 Act.

(3) The provisions of regulation 24(2) and (3) apply to a deemed application and a grant of planning permission under section 177 of the 1990 Act as they apply to an application for and grant of planning permission under Part 3 of the 1990 Act.

**Significant transboundary effects**

**51.** Regulation 53 applies to unauthorised EIA development as if—

(a) regulation 53(1)(a) read—

“(a) on consideration of an appeal under section 174 of the 1990 Act the Welsh Ministers are of the opinion that the matters which are alleged to constitute the breach of planning control comprise or include EIA development and that the development has or is likely to have significant effects on the environment in another EEA State; or”;

(b) in regulation 53(3)(a), “a copy of the application concerned” read “a description of the development concerned”;

(c) in regulation 53(6), “application” read “appeal”.