

SCHEDULE 6

Regulation 40

Section 97 and 102 Orders under the 1990 Act

1. In a case to which this Schedule has effect, these Regulations apply subject to the following modifications.
2. Regulations 3, 7(2), 9, 10, 12(1), (2) and (8), 13 and 21 do not apply.
3. In this Schedule and in the application of these Regulations by this Schedule, references to the “relevant planning authority” are to the local planning authority to whom it would fall to make the section 97 order or the section 102 order, whether or not they are the initiating body.
4. Regulation 5 is to be read as if—
 - (a) paragraph (2)(a) does not apply;
 - (b) in paragraph (2)(b), for “relevant” read “local”;
 - (c) paragraph (10) is omitted.
5. Regulations 8, 11 and 12(3) to (8) apply as if references to—
 - (a) an application or an application for planning permission, are to a proposal for a section 97 order or a section 102 order;
 - (b) the applicant are to the initiating body; and
 - (c) an EIA application, are to a proposal for a section 97 order or a section 102 order granting or modifying planning permission for EIA development.
6. Regulation 12(8) is to be read as if “by refusing planning permission or subsequent consent” read “by refusing to make or confirm the section 97 or section 102 order”.
7. Regulation 14 and its heading are to be read as if they provided—

“Scoping opinions and scoping directions

14.—(1) Where a proposed section 97 order or section 102 order permit or require EIA development, the initiating body may state its opinion as to the scope and level of detail of the information to be provided in the environmental statement.

(2) Before issuing a scoping opinion or scoping direction under paragraph (1) the initiating body must include—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the development including its location and technical capacity;
- (c) its likely significant effects on the environment; and
- (d) such other information or representations as the initiating body may wish to provide or make.

(3) An initiating body must not adopt a scoping opinion or scoping direction until they have consulted the consultees.

(4) Before adopting a scoping opinion or scoping direction the initiating body must take into account—

- (a) the information prepared by the initiating body about the proposed development in accordance with paragraph (2);
- (b) the specific characteristics of the particular development;
- (c) the specific characteristics of development of the type concerned; and

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(d) the environmental features likely to be affected by the development.

(5) A local planning authority may ask the Welsh Ministers under regulation 15(1) to make a direction as to the information to be provided in the environmental statement.

(6) If the Welsh Ministers make a scoping direction of their own volition or at the request of a third party, they must send a copy to the local planning authority which initiated the order.”

8. Regulation 15 is to be read as if it provided—

“Scoping directions

15.—(1) A request made under this paragraph pursuant to regulation 14 must include—

(a) the information referred to in regulation 14(2); and

(b) any representations that the local planning authority wishes to make.

(2) If the Welsh Ministers consider that the information provided pursuant to paragraph (1) is insufficient to make a scoping direction, the Welsh Ministers must give notice to the local planning authority.

(3) The notice must set out any points on which additional information is required.

(4) The Welsh Ministers must—

(a) consult the consultees before making a scoping direction in response to a request under paragraph (1), and

(b) make a direction and send a copy to the local planning authority, within 5 weeks beginning with the date of receipt of that request or such longer period as may be reasonably required.

(5) Before making a scoping direction the Welsh Ministers must take into account the matters specified in regulation 14(4).”

9. Regulation 16 is to be read as if it provided—

“16.—(1) An initiating body which intends to prepare an environmental statement may consult with a consultee in order to determine whether the consultee has any information which the consultee or the initiating body considers relevant to the preparation of the environmental statement.

(2) If the consultee has such information, the consultee must treat the consultation by the initiating body as a request for information by the local planning authority under regulation 5(1) of the Environmental Information Regulations 2004 ^{M1}.”

Marginal Citations

M1 S.I. 2004/3391.

10. Regulation 17 is to be read as if—

(a) Paragraph (1) is omitted;

(b) in paragraph (3)(d), for “applicant or appellant” it read “initiating body”;

(c) in paragraph (4)(b), for “applicant or appellant” it read “initiating body”.

11. Regulation 18 is to be read as if it provided—

“18.—(1) Where a statement, referred to as an environmental statement, has been prepared by an initiating body in relation to development which is related to a section 97 order or section 102 order, that body must—

- (a) send a copy of the draft section 97 order or draft section 102 order and the statement to the consultees and inform them that they may make representations; and
- (b) notify any particular person of whom the body is aware and who is likely to be affected by, or has an interest in, the draft order and unlikely to become aware of it by means of electronic publication, a site notice or by local advertisement, of—
 - (i) the address of the office of the initiating body where a copy of the draft order and statement may be obtained; and
 - (ii) the address to which representations may be sent.

(2) The initiating body must not make the order until after the expiry of 30 days from the last date on which a copy of the statement was publicised in accordance with this regulation or regulation 19.

(3) When the local planning authority prepare an environmental statement, they must send to the Welsh Ministers, within 14 days after sending the statement to the consultees, one copy of each of any relevant screening opinion, statement of reasons and draft order, in electronic and paper format unless otherwise agreed in writing.”

12. Regulation 19 is to be read as if—

- (a) paragraph (1) were omitted;
- (b) paragraph (2) read—

“(2) The initiating body must publish by local advertisement a notice stating—

- (a) the name and address of the initiating body;
- (b) the address or location and the nature of the development referred to in the proposed section 97 order or section 102 order;
- (c) that a copy of the draft order and of any plan or other documents accompanying it together with a copy of the environmental statement may be inspected by members of the public at all reasonable hours;
- (d) the address of the office of the initiating body at which those documents may be inspected, and the latest date on which they will be available for inspection (being a date not less than 30 days from the date on which the notice is published);
- (e) details of a website maintained by or on behalf of the relevant planning authority on which further information or any other information may be inspected and the latest date on which they are available for access (being a date not less than 30 days from the date on which the notice is published);
- (f) an address (whether or not the same as that given under sub-paragraph (d)) of the office of the initiating body at which copies of the statement may be obtained;
- (g) that copies may be obtained there so long as stocks last;
- (h) if a charge is to be made for a copy, the amount of the charge; and
- (i) that any person wishing to make representations about the order should make them before the date specified in accordance with sub-paragraph (d), to the initiating body.”;

(c) paragraph (3) were omitted;

(d) in paragraph (4), “applicant” read “initiating body”; and

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(e) paragraphs (6) to (8) were omitted.

13. Regulation 20 is to be read as if it provided—

“20. Where a local planning authority submits a section 97 order or a section 102 order to the Welsh Ministers for confirmation, the authority must also submit one copy of any environmental statement and any further information.”

14. Regulation 22 is to be read as if it provided—

“22.—(1) Where the initiating body is the local planning authority, they must ensure that a reasonable number of copies of the statement referred to as the environmental statement prepared in relation to development in relation to which the authority propose to make a section 97 order or section 102 order are available at—

- (a) their principal office during normal office hours; and
- (b) at such other places within their area as they consider appropriate.

(2) Where the initiating body is the Welsh Ministers, they must send to the local planning authority who would be responsible for determining an application for planning permission in respect of the development covered by the proposed section 97 order or section 102 order, a copy of the environmental statement prepared in relation to the proposed order.

(3) When the local planning authority receive a copy of an environmental statement pursuant to paragraph (2), they must ensure that a reasonable number of copies of the statement are available at—

- (a) their principal office during normal office hours; and
- (b) at such other places within their area as they consider appropriate.”

15. Regulation 24 must be read as if—

(a) paragraph (1) read—

“(1) Where—

- (a) an environmental statement has been prepared; and a section 97 order or section 102 order is submitted to the Welsh Ministers for confirmation; and
- (b) the Welsh Ministers consider that it is necessary for the statement to contain additional information directly relevant to reaching a reasoned conclusion on the likely significant effects of the development in order to be an environmental statement, the Welsh Ministers must notify the relevant planning authority; and that authority must ensure that the additional information is provided; and such additional information is referred to in these Regulations as “further information” (“*gwybodaeth bellach*”).”;

(b) paragraph (3) read—

“(3) The initiating body must publish by local advertisement a notice stating—

- (a) the name and address of the relevant planning authority;
- (b) the address or location and the nature of the development referred to in the proposed section 97 order or section 102 order;
- (c) that further information is available in relation to an environmental statement which has already been provided;
- (d) that a copy of the further information may be inspected by members of the public at all reasonable hours;

- (e) the address of the office of the initiating body at which the further information may be inspected, and the latest date on which it is available for inspection (being a date not less than 30 days from the date on which the notice is published);
 - (f) details of a website maintained by or on behalf of the authority on which the other information may be inspected and the latest date on which it is available for access (being a date not less than 30 days from the date on which the notice is published);
 - (g) the address (whether or not the same as that given under sub-paragraph (e)) of the office of the initiating body at which copies of the further information may be obtained;
 - (h) that copies may be obtained there so long as stocks last;
 - (i) if a charge is to be made for a copy, the amount of the charge;
 - (j) that any person wishing to make representations about the further information should make them to the authority before the latest date specified in accordance with sub-paragraphs (e) and (f);
 - (k) the address to which representations should be sent.”;
- (c) paragraph (4) read—
- “(4) The local planning authority must send a copy of the further information to each person to whom, in accordance with these Regulations, the statement to which it relates was sent, and to the Welsh Ministers.”;
- (d) paragraphs (5) and (6) were omitted;
- (e) paragraph (7) read—
- “(7) Where information is provided under paragraph (1) or any other information is provided the Welsh Ministers must not confirm the section 97 order or section 102 order before the expiry of 30 days after the latest of—
- (a) the date on which the further information was sent to all persons to whom the statement to which it relates was sent;
 - (b) the date that notice of it was published in a local newspaper; or
 - (c) the date that notice of it was published on a website.”;
- (f) in paragraph (8)—
- (i) “The applicant or appellant who provides” read “The local planning authority providing”; and
 - (ii) in sub-paragraph (a), after “number of copies of the” and before “information”, it read “further”.
- 16.** Regulation 25(1) is to be read as if—
- (a) “an application or appeal” read “whether to make or confirm a section 97 or section 102 order”; and
 - (b) “submitted” read “prepared”.
- 17.** Regulation 27 is to be read as if it read—
- “**27.**—(1) Each local planning authority must keep a record containing a copy of every section 97 order and section 102 order relating to their area, together with a statement of the reasons for making the order; and the authority must take steps to secure that there is also placed on that record a copy of any relevant—
- (a) screening opinion;

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- (b) screening direction;
- (c) scoping opinion;
- (d) direction under regulation 5(4) or (5);
- (e) statement referred to as the environmental statement, including any further information;
- (f) statement of reasons accompanying any of the above.

(2) Where the local planning authority adopt a screening opinion or scoping opinion, or receive a copy of a screening direction or scoping direction before a section 97 order or a section 102 order is made, the authority must take steps to secure that a copy of the opinion or direction and any accompanying statement of reasons is made available for public inspection at all reasonable hours at the place where the record is kept.

(3) Copies of the documents referred to in paragraph (2) must remain so available for a period of two years from the date on which they are placed on the record.”

18. Regulation 28 is to be read as if paragraph (1) read—

“(1) Where an initiating body makes a section 97 or section 102 order granting permission for EIA development, they must prepare a statement setting out the information specified in paragraph (2).”

19. Regulation 29 is to be read as if it provided—

“**29.**—(1) In this regulation, “decision” (*“penderfyniad* means, in relation to an order which takes effect under section 97(7) of the 1990 Act, the decision to make the order and otherwise, the decision to confirm the section 97 order or the section 102 order.

(2) Where a section 97 order or a section 102 order permitting or requiring EIA development takes effect, the Welsh Ministers must—

- (a) notify the relevant planning authority when the order is made or confirmed; and
- (b) other than in relation to section 97 orders which take effect without being confirmed by the Welsh Ministers ^{M2}, provide the authority with a statement containing the information in paragraph (3)(c).

(3) Where a section 97 order or a section 102 order permitting or requiring EIA development takes effect, the relevant planning authority must—

- (a) inform the public of the decision, by local advertisement, or by such other means as are reasonable in the circumstances; and
- (b) make available for public inspection at the place where the record of section 97 orders and section 102 orders is kept, a statement containing—
 - (i) the content of the decision and any conditions attached to it;
 - (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;
 - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development permitted or required by the order; and
 - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.”

Marginal Citations

M2 See section 99(7) of the 1990 Act in relation to orders confirmed by the Welsh Ministers.

20. Regulation 56 is to be read as if—

- (a) “decision” has the same meaning as in regulation 29 as modified by paragraph 19;
- (b) in paragraph (1)(a) read—
 - “(a) it comes to the attention of the Welsh Ministers that EIA development proposed to be carried out in Wales, which an initiating body proposes to require or permit by a section 97 order or a section 102 order is likely to have significant effects on the environment in another EEA State; or”; and
- (c) in paragraphs (3) and (6), instead of “application” it read “proposed section 97 order or section 102 order”.

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