

REGULATORY APPRAISAL

TOWN AND COUNTRY PLANNING, WALES

THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (AMENDMENT) (WALES) REGULATIONS 2006

Background

1. Directive 2003/35/EC is one of the legislative Instruments that transpose the provisions of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (known as the Aarhus Convention) into European Community law.
2. Article 3 amends EIA Directive 85/337/EEC in order to align the public participation and access to justice provisions of the Convention with EIA requirements. This involves some relatively minor changes to the Directive, and consequently, to domestic Regulations.
3. The Regulations are being introduced to transpose, for projects within the planning system, Article 3 of European Directive 2003/35/EC, which amends the public participation and access to justice provisions of the Environmental Impact Assessment (EIA) Directive 85/337/EEC.
4. Article 3 of Directive 2003/35/EC applies throughout the UK. It will be transposed separately in England, Scotland and Northern Ireland.

Purpose and intended effect of the measure

5. The intended effect of the Regulations is to implement the requirements of Article 3 of the 'Public Participation' Directive 2003/35/EC. Standardisation across Europe of public participation and the availability of environmental information in environmental decision making was the subject of 'The Aarhus Convention' (United Nations Economic Commission for Europe's Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters). The 'Aarhus Convention' and in turn the 'Public Participation' Directive affect a wide range of plans, programmes and environmental decision making where 'environmental impact assessment' (EIA) is included within the decision making process. EIA is a procedure that draws together, in a systematic way, an assessment of a project's likely significant environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing them, are properly understood by the public and the relevant authority before decisions are made.
6. These Regulations incorporate the requirements of the Convention and Directive into the town and country planning system. There are other EIA Regulations that have or will need to be amended in policy areas such as highways, uncultivated land, land drainage and harbour works. The proposed Regulations make a minor amendment to update some EIA-related definitions in the Town and Country Planning (General Development Procedure) Order 1995, but the main effect of the Regulations is to amend the Town and Country Planning (Environmental

Impact Assessment) (England and Wales) Regulations 1999 by requiring the following changes to procedures for planning applications where an environmental impact assessment (EIA) is necessary:

- additional direct notification of EIA applications for persons unlikely to become aware of the proposal through existing EIA consultation methods (site notices or press notices), including non-governmental organisations;
- advertisement to additionally include publication via a local planning authority's website;
- voluntarily submitted information to be publicised in the same manner currently undertaken for information required by the Local Planning Authority or National Assembly for Wales; and
- clarification that extensions or changes to projects listed in Schedule 1 of the existing Regulations automatically require EIA where they meet the relevant thresholds.

Risk Assessment

7. Failure to implement these Regulations could be seen as inadequate transposition and could result in infraction proceedings by the European Commission against the National Assembly for Wales. In addition, if these Regulations were not made there would be risk that sections of the public, including non-governmental organisations, are not aware of planning applications likely to have significant environmental effects and, therefore, would be omitted from the planning decision-making process. The consequent result would be that not all views might be taken into account and the process seen as lacking transparency.

Options

8. In respect of this legislation the “Do Nothing” option is not an option, as it would ultimately lead to infraction proceedings against the National Assembly for Wales by the European Commission. Therefore, the “Make Legislation” option, to implement the changes required to comply with European legislation, is being recommended.

Benefits

9. It is recognised that projects to which public authorities give their consent may have significant effects on the environment. Effective public participation in the environmental decision-making process has a number of benefits. It gives the public the opportunity to express their views and concerns about the environmental impact of proposed development, and the decision-maker to take these into account before reaching a decision on whether to grant consent. This enhances the transparency and accountability of the decision-making process and contributes to public awareness of environmental issues.

Costs

10. The changes proposed by these Regulations are largely procedural, but do include publicity arrangements that have cost implications although these are small and difficult to predict. As the changes affect only a small number of planning applications, compared to the overall caseload of both the Assembly Government and Local Planning Authorities (LPAs), the costs are insignificant

and can be met from existing budgets. Assembly costs will be met from the Environment, Planning and Countryside Department's Administration Main Expenditure Group and Planning Publicity and Services Budget Expenditure Line). To illustrate the point, the Regulations would affect around 40 applications of the 36,500 submitted each year in Wales.

11. Additional ongoing administrative costs of maintaining a consultation list of non-governmental organisations (NGOs) promoting environmental protection (such as Council for the Protection of Rural Wales, Greenpeace, or the Council for National Parks) and undertaking additional notifications are so small it is difficult to separately identify from the existing budget within which it will be accommodated in the Environment, Planning and Countryside Department, Administration Main Expenditure Group - Planning Publicity and Services Budget Expenditure Line. Advertising further information submitted voluntarily by an applicant could cost around £1,000 each time. It is already good practice to publicise such information. The Assembly Government receives voluntarily submitted information on average less than once per year and this can be accommodated by the existing statutory budget.
12. The financial cost to LPAs would be similar to that of the Assembly and, therefore, can be accommodated within their existing budgets given the very small number of cases involved. Local Planning Authorities have not made any representations in relation to the financial cost of these proposals, which were outlined within the consultation documents.
13. The only additional costs for business that would result from additional notifications are the postage cost and the time taken to print and send the letters, and these can be avoided if the need for EIA is established prior to submitting a planning application. The varying nature of EIA developments and their associated environmental impacts makes it impossible to predict the number of notifications that would be needed but the costs would be insignificant in terms of overall development costs. The Regulations do not require additional environmental statements to be distributed and there is existing provision within the Regulations to make a charge for their provision to the public.
14. The provisions of the Instrument make it more likely that NGOs would be aware of more applications of interest to them and would incur more costs in responding to these applications. It is, however, discretionary whether they wish to respond.

Competition Assessment

15. The competition filter test indicates these Regulations will not affect the property development market within Wales, as the proposals almost exclusively relate to the public sector. The rest of the UK and all the EU Member States are required to transpose this Directive.

Consultation

With Stakeholders

16. A public consultation was undertaken for eight weeks between 3 March 2005 and 27 April 2005. Draft Regulations and an accompanying consultation document

were sent to just over 600 individuals and organisations. Consultees included: all AMs; MPs with Welsh constituencies; all local authorities in Wales; all planning authorities in Wales; the Royal Town Planning Institute; conservation/environment organisations (e.g. Council for National Parks (Wales), Welsh Wildlife Trust), economic and trade organisations, utilities providers, waste and mineral companies. A list of consultees is attached at Annex A. The consultation document was published on the Assembly Government's website and responses were invited in written or electronic form.

17. Fifteen responses were received to the consultation and respondents were generally supportive of the proposed changes. Suggestions raised indicated that the Regulations should be more prescriptive in certain areas. The Regulations have had a number of minor drafting changes as a result of the consultation, but the majority of points raised will be incorporated into guidance. A draft revised circular and good practice guide on EIA are currently out to consultation and are available on the Assembly Government web-site. The closing date for comments is 6 November 2006. It is anticipated that the guidance will issue in Spring 2007.

With Subject Committee

18. The Regulations were notified to the Environment, Planning and Countryside Committee via the list of forthcoming legislation on 1 February 2006 (EPC (2) 02-06- Paper 3, item no.145, 49 PE). The Committee scrutinised the Regulations on 28 September 2006 (EPC(2)-12-06 (paper.4)) and approved the Regulations without amendment. A copy of the Committee transcript is attached at Annex B .

Review

19. The proposed changes mainly comprise relatively minor adjustments to our present provisions on public participation in the environmental impact assessment process. They relate essentially to making information about applications that are subject to EIA, available to the public. There is no easy way to monitor or evaluate such measures. However, breaches of EIA requirements run the risk of challenge by means of judicial review, and it is likely that those with an interest in a particular planning application may well use these means as a way of getting proposed development stopped or delayed. Such cases would come to our attention, and this provides one means of reviewing compliance with the new requirements.

Summary

20. The Regulations are necessary in order to transpose the amendment of Directive 85/337/EEC by Directive 2003/35/EC. The costs on business will be insignificant; those on the public sector (LPAs and, to some extent, the Assembly will not be substantial.

ANNEX A

Aberdare Chamber of Commerce
Advisory Council for the Education of
Romany and other travellers
Age Concern Cymru
Aggregates Industries UK Ltd
Albion Water
All Wales Ethnic Minority Association
(AWEMA)
AMICUS – AEEU
Anthony Bowhill & Associates
Aquila Energy Limited
ASDA Stores Ltd
Associated British Ports
Association for the Conservation of Energy
Association Of Consulting Engineers
Association Of Electricity Producers
Association of Local Government Ecologists
Association Of Manufacturers Of Power
Generating Systems
Association of National Park Authorities
Association of National Parks
Association of Welsh Community Health
Councils
Atkins
Atlantic Energy
AWEMA
Babtie Group
Barter Wilmore Planning
Bartlett School of Planning
BEAMA
Biffa Waste Services
Biffa Waste Services
Blaenau Gwent County Borough Council
Bond Pearce
Border Biofuels
Border Fuels Ltd
Boyer Planning
Brecknock Wildlife Trust
Brecon Beacons National Park Authority
Bridgend County Borough Council
British Aggregates Association
British Association of Leisure Parks, Piers
and Attractions
British Biogen
British Council for Shopping Centres
British Energy Association
British Gas PLC
British Holiday and Home Parks Association
Ltd
British Horse Society
British Library
British Retail Consortium
British Telecommunications PLC
British Waterways
British Wind Energy Association
BTCV
Building Research Establishment
Built and Movable Heritage Group Wales
Caddet Centre for Renewable Energy
Cadw
Caerphilly County Borough Council
Campaign for the Protection of Rural Wales
Camping and Caravanning Club
Caravan & Camping Forum for Wales
Caravan Club
Cardiff and the Vale ALC
Cardiff Chamber of Commerce
Cardiff County Council
Cardiff Gypsy Sites Group
Carlisle Davies and North Planning
Consultants
Carmarthenshire County Council
CBI Wales
Celtic Energy Ltd
Centre for Alternative Technology
Centre for Environment and Planning
Ceredigion County Council
Chamber of Lionel Read QC
Chamber Wales
Chartered Institute of Environmental Health
Chartered Institute of Housing Cymru
Chartered Institution of Waste Management
Chestertons
Children's Commissioner for Wales
Cinema Exhibitors Association
Citizens Advice Bureaux
City and County of Cardiff
City and County of Swansea
Civil Aviation Authority
Clerk to EPC Committee

Clwyd Alyn Housing Association
 Coal Authority
 Coed Cadw Woodland Trust
 Coedffranc Community Council
 Cofton Ltd
 Colliers CRE
 Combined Heat and Power Association
 Combustion Engineering Association
 Commission for Local Administration in Wales
 Commission for Racial Equality Wales Office
 Community Design Gwent
 Community Enterprise Wales
 Community Law Partnership
 Confederation of British Industry Wales
 Conwy County Borough Council
 Cooke and Arkwright
 Co-operative Group (CWS) Ltd
 Council for British Archaeology
 Council for National Parks
 Council of Mortgage Lenders Cymru
 Country Land and Business Association
 Countryside Council for Wales
 CPRW
 Crown Castle UK Ltd
 Crown Estate Commissioners
 Cunnane Town Planning
 Cyngor Cymuned Llanedi
 D J Harmer & Partners
 DAGP Architects, Planners and Surveyors
 David Wilson Estates Land and Planning
 Dee Valley Water
 Denbighshire County Council
 Department of City and Regional Planning, Cardiff University
 Department of Law, University Wales Aberystwyth
 Development Planning Partnership
 Disability Wales
 Dwr Cymru Welsh Water
 Dyfed Powys Police
 Dyfed Wildlife Trust
 E Butler
 E.On UK PLC
 Eastern Generation Ltd
 ECOGEN LTD
 Eddie Jones Associates
 Elf Oil
 EMP – Squared Consultants
 Encyclopaedia of Planning Law and Practice
 Energy from Waste Association
 Energy Institute
 Engineering Employers Federation (Wales)
 Environment Agency Wales
 Equal Opportunities Commission
 Eric Jones Associates
 ERW Chartered Surveyors
 ETSU
 EURO SOLAR LTD
 EUROWATT
 Eversheds Solicitors
 Farmers Union of Wales
 Farming and Rural Conservation Agency
 Federation of Building Specialist Contractors
 Federation of Master Builders
 Federation of Small Businesses
 Federation of the Electronics Industry
 Flintshire County Council
 Forest Enterprise (Wales)
 Forestry and Timber Association
 Forestry Authority
 Forestry Commission GB & Scotland
 Forestry Commission Wales
 Forestry Contracting Association
 Freight Transport Association
 Friends Family and Travellers
 Friends of the Earth
 Friends of the Earth (Cymru)
 Friends of the Earth (Mon & Gwynedd)
 G L Hearn & Partners
 Glamorgan Gwent Archaeological Trust Ltd
 Glamorgan Wildlife Trust
 GMB
 Greenpeace UK
 Greenways Waste Management
 GVA Grimley
 Gwent CPRW
 Gwent Police

Gwent Wildlife Trust
 Gwynedd Archaeological Trust
 Gwynedd County Council
 Gypsy Council for Education, Culture,
 Welfare & Civil Rights
 HAFAN
 Hammerson PLC
 Hanson Quarry Products Europe Ltd
 Health and Safety Executive
 House Builders Federation
 Hutchinson 3G Uk
 Inland Waterways Amenity Advisory
 Council
 Inland Waterways Association
 Innogy PLC
 Insignia Richard Ellis
 Institute of Chartered Accountants in
 England and Wales
 Institute of Civil Engineers
 Institute of Directors
 Institute of Geography & Earth Sciences
 Institute of Highways and Transportation
 North Wales
 Irish Traveller Movement in Britain
 ISES UK
 Isle of Anglesey County Council
 J. Sainsbury PLC
 John Collins & Partners
 Joint Committee of the National Amenity
 Societies
 Kimpton Durham John Associates
 Knight Frank
 Lafarge Aggregate Ltd
 Land Registry Wales Office
 Land Use Consultants
 Landscape Institute
 Landscape Institute Wales
 Lattic Property Holdings Ltd
 Law Society
 Law Society Wales
 Liddel & Associates
 London Gypsy and Traveller Unit
 Lyndis Cole
 Magistrates Association
 MANWEB
 Marks and Spencer
 Mason Richards Planning
 Merthyr Tydfil County Borough Council
 Milford Haven Port Authority
 Monmouthshire County Council
 Montgomeryshire Wildlife Trust
 Mostyn Docks Ltd
 MWM Planning Ltd
 Nathaniel Litchfield & Partners
 National Association of Gypsy & Traveller
 Officers
 National Association for Leisure Industry
 Certification
 National Association of Citizens Advice
 Bureaux
 National Association of Local Councils
 National Farmers Union (Wales)
 National Grid Transco PLC
 National Housing and Town Planning
 Council
 National Housing Federation
 National Small Woods Association
 National Trust (South Wales)
 Neath Port Talbot County Borough Council
 Network Rail
 Newport & Gwent Chamber of Commerce
 Newport City Council
 NFU CYMRU
 North Wales Police
 North Wales Wildlife Trust
 NTL
 O2 Airwave
 O2 UK
 ODPM
 One Voice Wales
 Orange PCS Ltd
 Ove Arup & Partners
 Paul Butler Associates
 Peacock and Smith
 PEBA
 Pedestrian Association
 Pembroke Civic Trust
 Pembrokeshire Coast National Park
 Authority
 Pembrokeshire County Council
 Peter Holden Architects
 Petrofac
 Planning Aid Wales
 Planning Inspectorate

Planning Officers' Society Wales
 Pontypool Park Estate Office
 Powergen
 Powys County Council
 Property Association
 Quarry Products Association
 Race Equality First
 Radnorshire Wildlife Trust
 Representative Body of the Church in Wales
 Rhondda Cynon Taf County Borough Council
 RMC Aggregates Ltd
 Royal Institution of Chartered Surveyors Wales
 Royal Mail PLC
 Royal Society for the Protection of Birds
 Royal Society of Architects in Wales
 Royal Town Planning Institute in Wales
 Rt Hon Earl of Lytton
 Scottish Power
 Severn Trent Water
 Shanks and McEwan (North) Waste Services
 Shanks and McEwan (South) Waste Services
 Shawater Ltd
 Showmans Guild of Great Britain
 Snowdonia National Park Authority
 Solar Trade Association
 South Electricity
 South Wales Police
 Sports Council for Wales
 St Quentin Chartered Surveyors
 Strategic Rail Authority
 Sustainable Energy Ltd
 Sustainable Wales
 Sustrans Cymru
 SWALEC
 Swansea City and County Council
 Taff Ely Friends of the Earth
 Tanaris Energy Ltd
 Tarmac
 Tenant Farmers Association
 Terry Adams Ltd
 Tesco PLC
 Texaco Pembroke

TGWU
 The Civic Trust for Wales
 The Garden History Society
 The Vale of Glamorgan Council
 Tony Thorpe Association
 Torfaen County Borough Council
 Torfaen Friends of the Earth
 Town and Country Consultancy Ltd
 Town and Country Planning Association
 Traffic Commissioner
 Transco
 TRANSCO
 Undeb Amaethwyr Cymru
 UNIFI
 United Welsh Housing Association
 Vale of Glamorgan Council
 Vodafone
 Voluntary Sector Assembly Centre
 W S Atkins
 Wales and West Housing Association
 Wales Assembly for Women
 Wales Association of Community and Town Councils
 Wales Chairman for Architecture and Surveying Institute
 Wales Conservancy
 Wales Consultants Forum
 Wales Co-operation Centre Ltd
 Wales Council for the Blind
 Wales Council for the Deaf
 Wales Council for Voluntary Action
 Wales Disability Rights Commission
 Wales Environment Link
 Wales Planning Forum
 Wales Planning Policy Panel
 Wales Rural Forum
 Wales Social Partners Unit
 Wales Tourist Board
 Wales Transport Strategy Group
 Wales TUC
 Wales Wildlife and Countryside Link
 Walters Mining Ltd
 Waste Management Information Bureau
 Welsh Association of Community and Town Councils
 Welsh Consumer Council

Welsh Development Agency
Welsh Federation of Housing Associations
Welsh Hospitals & Health Services
Association
Welsh Language Board
Welsh Local Government Association
Welsh School of Architecture
Welsh Wildlife Centre
Welsh Wildlife Trusts
Welsh Women's National Coalition
Wessex Water Enterprises
West Coast Energy Ltd
West Wales Chamber of Commerce
Western Planning
Western Power Distribution
Williamson Associates
Windpower Developments (UK) Limited
Womens National Commission
Wrexham County Borough Council
WWF Cymru
Wyn Thomas Gordon Lewis Plc
Wynns Limited
YHA England & Wales
YHA National Countryside Committee
Ystrad Mynach Chamber of Trade
All Assembly Members
All MPs with Welsh constituencies

ANNEX B – Environment, Planning and Countryside Committee Transcript

[207] **Glyn Davies:** Are Members happy with those five? I see that they are, so we will go on to the next one. In dealing with legislation, before we consider them, I have asked Gwyn to look at what scope there is for us to make an amendment. If there is no scope, there is no point in us spending any time talking about it. I have asked Gwyn to look specifically at the two items before us today to see what scope there might be for us to make a difference. On the town and country planning regulations, you have pretty much suggested that there is almost no room for that change. Perhaps I had better let you speak.

[208] **Mr Griffiths:** I think that the position on this is that there is a fair amount of scope, but a lot of it is detailed material that will go into guidance rather than necessarily into the legislation itself. The directive is fairly loosely drafted. For example, article 2.3 says that the detailed arrangements for public participation under this article shall be determined by the member states so as to enable the public to prepare and participate effectively. So, there is a fair amount of flexibility there. As is clear from the regulatory appraisal, a lot of the points made in the consultation were points that were suitable to be taken into account in the guidance, rather than in the detail of the regulations.

[209] **Glyn Davies:** I apologise to committee members—I have read them both, but I was referring to the other one, where there was very little scope. This is the one on which there have been few responses from the consultees, and all the responses have generally been supportive, at least that was what was being indicated. If anyone wishes to raise something on these regulations, now is your chance. If no-one does, we will move on to the other one that is before us.