

Environment, Planning and Countryside

EPC(2) 12-06(p4) Annex 1

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 it makes its decision.

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 Regulations amend the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 by requiring the following changes to procedures for planning applications that require environmental impact assessment (EIA):

- 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 competent authority; 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 continuing. 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, are 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 implemented.

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. 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 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 Government and, therefore, can be accommodated within their existing budgets given the very small number of cases involved.

13. The only additional costs for business would result from additional notifications, 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.)

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 identified the Regulations for detailed scrutiny and will be considered on 28 September 2006.

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 Government) 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
Latic Property Holdings Ltd
Law Society
Law Society Wales
LiddeI & 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
Nathanial 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 Commisioner
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