



To all Chief Planning Officers in Wales

Eich cyf • Your ref:  
Ein cyf • Our ref: A-PAA 12-02-120 (CL-10-06)  
Dyddiad • Date: 12 December 2006

Dear Chief Planning Officer,

**TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT)  
(AMENDMENT) (WALES) REGULATIONS 2006 ("THE 2006 REGULATIONS") :  
INTERIM GUIDANCE FOR LOCAL PLANNING AUTHORITIES**

Planning authorities will be aware that the 2006 Regulations (S.I. 2006 No. 3009) came into force on 30 November 2006. They can be viewed at:  
<http://www.opsi.gov.uk/legislation/Wales/wsi2006/20063099e.htm>.

We have recently consulted on an Environmental Impact Assessment (EIA) Circular to replace Welsh Office Circular 11/99. This will provide guidance on the changes made to the 1999 EIA Regulations and will include references to case law to illustrate significant aspects of EIA. We are currently considering the consultation responses and will publish the revised EIA Circular as soon as possible. It is likely that the need to include substantive advice in the Circular on applications for outline planning consent will delay publication of the Circular.

In the meantime, the interim guidance attached to this letter provides an explanation of the changes made to the 1999 Regulations and of new and expanded interpretations included in the 2006 Regulations.



This guidance is also available on the Welsh Assembly Government website at:  
<http://new.wales.gov.uk/about/departments/depc/epcpublications/PlanPubs/Circletters/?lang=en>.

Yours faithfully

Rosemary Thomas  
Head of Planning Division

## INTERIM GUIDANCE TO WELSH LOCAL PLANNING AUTHORITIES

### THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT)(AMENDMENT)(WALES) REGULATIONS 2006 (S.I. 2006 No. 3009)

The Town and Country Planning (Environmental Impact Assessment) (Amendment)(Wales) Regulations 2006 (S.I. 2006 No 3009) (“the 2006 Regulations”) came into force on 30 November 2006. They amend the Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999 (S.I. 1999 No 293) (“the 1999 Regulations”).

The 2006 Regulations transpose the amendments made to the Environmental Impact Assessment (EIA) Directive (85/337/EEC, as amended by EC Directive 97/11) by Article 3 of the Public Participation Directive (2003/35/EC). The opportunity has also been taken to amend the current definition of “the consultation bodies”, as a consequence of the European Commission’s opinion that the previous definition did not fully implement Article 6.1 of the EIA Directive.

The Welsh Assembly Government has already consulted on both a revised EIA Circular and “A Guide to Good Practice and Procedures”. The consultation responses are being considered and a revised circular and guide will issue in due course. The purpose of this note is to offer interim guidance, in the meantime, on changes made to the 1999 Regulations that will affect applications for planning consent made to local planning authorities after 30 November 2006. This is not a guide to the 2006 Regulations in their entirety: instead concentrating on the new procedures to which local planning authorities must comply; and explaining the new or expanded interpretations included in the 2006 Regulations. This guidance is not an authoritative statement of the law and should be read in conjunction with the 2006 Regulations and Welsh Office Circular 11/99 that provides advice on the 1999 Regulations.

#### **New or expanded interpretations included in the 2006 Regulations**

**“Any other information”** means any other substantive information that is not “further information” (see “environmental information below”) relating to the environmental statement and provided by the applicant or appellant as the case may be. This includes information that has been submitted voluntarily.

**“ Any particular person”** includes any non-governmental organisations (NGOs) promoting environmental protection.

**“The consultation bodies”** now includes bodies designated by statutory provision as having specific environmental responsibilities and which the local planning authority or the National Assembly for Wales, as the case may be, considers are likely to have an interest in the applications. This is particularly relevant to proposed development close to the border with England when statutory bodies in England may need to be consulted.

**“Environmental information”** now includes “any other information” (as defined above) as well as “further information”. “Further information” is defined in Regulation 19(1) of the 1999 EIA Regulations and is essentially the additional information required in order for the statement to contain the information statutorily required for it to be an environmental statement.

**“Exempt development”** no longer includes projects that comprise or form part of a project serving national defence purposes.

**“ By local advertisement”** means publication of the notice in a newspaper circulating in the locality in which the land to which the application or appeal relates is situated; and, where the local planning authority maintains a website for the purposes of advertisement of applications, by publication of the notice on the website.

#### **Regulation 5 (Application made to a local planning authority without an environmental statement (ES))**

This adds a new provision to regulation 7 of the 1999 Regulations. When an EIA application is received but is not accompanied by an ES, the local planning authority must notify the applicant of “any particular person” which it considers is or is likely to be affected by, or have an interest in, the application. The purpose of this requirement is to ensure that relevant non-governmental organisations (NGOs) are made aware that an ES is to be submitted, if they may not become aware through the current publicity channels of local newspaper and site notice.

#### **Regulation 8 (Procedure where an ES is submitted to a local planning authority)**

This adds a new provision to regulation 13 of the 1999 Regulations. In such circumstances, the local planning authority is responsible for the publicity arrangements under the General Development Procedure Order 1995. Under the new provision, on receipt of the ES, the local planning authority should notify “any particular person” (who is, or is likely to be affected by, or has an interest in the application and who is unlikely to become aware of it by means of a site notice or by local advertisement), of the relevant details specified in Regulation 14(2)(b) to (j) of the 1999 Regulations and the name and address of the relevant planning authority.

#### **Regulations 8, 10 and 13 (Number of ESs required)**

In situations where regulations 13, 19 and 22 of the 1999 Regulations apply, the number of ESs that are required to be sent to the National Assembly for Wales is reduced from three to two.

## **Regulation 9 (Publicity where an ES is submitted after the planning application)**

This adds a new provision to regulation 14 of the 1999 Regulations. In such circumstances, the applicant is responsible for publicity. Under the new provision, the applicant, having been notified by the planning authority of “any particular person” it considers is likely to have an interest in the development, must provide such persons with the relevant information specified in regulation 14(2), except that the date specified as the latest date on which documents will be available for inspection will not be less than 21 days from the date on which the notice is first served.

## **Regulation 10 (Further information and evidence respecting ESs)**

This adds a new provision to regulation 19 of the 1999 Regulations. As well as having to publicise “further information” that the local planning authority has specifically asked the applicant to provide (on the grounds that, without it, the information provided does not constitute an environmental statement, as defined in regulation 2 of the 1999 Regulations), the local planning authority must now publicise “any other information” provided by the applicant relating to the environmental statement.

This advice supersedes the advice in the Q&A attached to Circular letter CL-02-02 under the question “what if the applicant changes the ES rather than simply provides further information?”

## **Regulation 11 (Availability of opinions, directions etc. for inspection)**

The amendment to regulation 20 of the 1999 Regulations simply requires local planning authorities to keep a copy of “any other information” provided voluntarily by the applicant relating to the environmental statement on Part 1 of the Planning Register, with the copy of the environmental statement. Essentially, it extends the requirements in relation to “further information” to “any other information”.

## **Regulation 12 (Duties to inform the public and the National Assembly for Wales of final decisions)**

This introduces a small amendment to the requirement in regulation 21 of the 1999 Regulations for local planning authorities to publicise determinations of EIA applications. Local planning authorities must publish the determination both in a local newspaper, as now, and on the local planning authority’s website (provided the authority maintains a website for advertising applications).

Also, the statement which local planning authorities are required to keep for public inspection, under regulation 21(1), should include, if relevant, information about the participation of the public. The National Assembly for Wales, for determinations for which it is responsible, will have to include this information in the statement it currently provides to the local planning authority, so that it can be made publicly available. Additionally, the statement will be required to contain information about the right to challenge the validity of the decision and the procedures for doing so. The current judicial review procedure is considered sufficient to satisfy the requirements of the Public Participation Directive.

## **Regulation 14 (Unauthorised development)**

This regulation imports the additional publicity requirements into regulation 25(16) and (17) of the 1999 Regulations, which cover publicity of further information submitted in connection with enforcement action. Essentially, the publicity must now cover “any other information” as well as “further information; and the publicity must be by way of both a local newspaper

and, where the local planning authority maintains a website for the purposes of advertisement of applications, by publication on the website.

Also, when a local planning authority serves a regulation 25 notice, it must send a copy of it to “any particular person” which it considers is or is likely to be affected by, or have an interest in the development.

### **Regulation 17 (Amendment of Schedule1)**

A change to or an extension of a Schedule 1 project, where the change or extension itself meets the Schedule 1 thresholds for that type of project, has been included as a new category in Schedule 1 to the 1999 Regulations.

### **Regulation18 (Amendment of Schedule 2)**

As a consequence of the new Schedule 1 category introduced by regulation 17, paragraph 13(a) of Schedule 2 to the 1999 Regulations has been amended to make it clear that this category can only include a change or an extensions to a Schedule 1 project that does not itself fall in Schedule 1.

### **List of EIA consultation preferences**

The Welsh Assembly Government is in the process of establishing a list of EIA consultation preferences for when the Welsh Assembly Government, as the competent authority, is required to identify interested NGOs. This list will be published on the Welsh Assembly Government website, in due course, and local planning authorities are welcome to access it. As well as using this list, local planning authorities must make all reasonable attempts to identify relevant local bodies likely to have an interest in a particular proposal; and should consider establishing a database of local organisations promoting environmental protection.

### **Extant Circular letters**

Local planning authorities are reminded that the advice contained in EIA Circular letters (CL-01-01; CL-02-02; CL-02-04; CL-04-06; and CL-05-06) is still relevant (but please note the exception above under Regulation 10). They can be viewed on the Welsh Assembly Government website at:

<http://new.wales.gov.uk/about/departments/depc/epcpublications/PlansPubs/circletters/?lang=en>