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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document - annex

Proposed changes to how Environmental Impact
Assessment applies to Town and Country Planning

Date of issue: 22/08/2016

Action required: Responses by 11/11/2016

Overview	<p>This consultation seeks your views on proposed changes to the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 to implement European Directive 2014/52/EU on Environmental Impact Assessment.</p>
How to respond	<p>The closing date for responses is 11/11/2016. You can respond in any of the following ways:</p> <p>Email: Please complete the consultation response form and send it to:</p> <p>planconsultations-e@wales.gsi.gov.uk</p> <p>Post: Please complete the consultation response form at Annex 1 and send it to:</p> <p>Development Management Branch Planning Directorate Welsh Government Cathays Park Cardiff CF10 3NQ</p>
Further information and related documents	<p>Large print, Braille and alternative language versions of this document are available on request.</p> <p>Information on Environmental Impact Assessment is available here:</p> <p>http://ec.europa.eu/environment/eia/eia-legalcontext.htm</p>
Contact details	<p>For further information:</p> <p>E-mail: planconsultations-e@wales.gsi.gov.uk</p> <p>Tel: Owen Struthers on 029 2082 6430</p>

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

DRAFT REGULATORY IMPACT ASSESSMENT FOR CONSULTATION

3. Options

- 6.1 The proposals have been separated into those that transpose the changes introduced by the 2014 EIA Directive, and those that are desirable to improve the operation of EIA process.

Transposition of the 2014 EIA Directive

- 6.2 We have considered two options for the transposition of the 2014 EIA Directive:

Option 1: Do nothing.

- 6.3 The do nothing option would maintain the current regulations for planning without transposing the requirements of the 2014 EIA Directive. This would put the Welsh Government at risk of infraction proceedings and possible fines.
- 6.4 It is difficult to predict with any degree of certainty the fine that may be imposed by the European Court of Justice in any individual case. To give an indication of historic fines, in a Spanish bathing water case, the levy was €624,000 per year for each one % of bathing waters in breach of the relevant Directive. In a French fishing case the levy was a €20 million lump sum fine and €58 million every 6 months until the issue is resolved. In a Greece state aid case the levy was €16,000 for each day of delay in complying with the judgement and a lump sum of €2 million. Due to the major uncertainty around the actual imposition and size of the potential fine the benefit of avoiding this have not been monetised.
- 6.5 As this option is not viable, it has not been considered any further in this impact assessment except to the extent that the 'do nothing' costs have been used as the baseline against which costs and benefits of option two are calculated.

Option 2: Full transposition of the 2014 EIA Directive.

- 6.6 This is the preferred option and will ensure the requirements of the amended EIA Directive are fully implemented through the planning system.

7. Costs & benefits

- 7.1 The list of amendments in the Directive is contained in Annex 1. The amendments include a number of areas that will have no impact on EIA practice within Wales. These include amendments that take account of Court of Justice of the European Union case law and amendments that will reinforce the current EIA practice in Wales (the amendment has been made to provide consistency across the EU, and will affect practice within other Nation States). The table provides a summary of these changes and those which are excluded from the main RIA.

8. Sectors affected

- 8.1 The sectors most likely to be affected by the proposals include:
- businesses who make EIA applications;
 - Local planning authorities (LPAs) and the Welsh Government who process EIA applications; and,
 - the wider public, who are interested in the protection of the environment and participate in EIA projects.

Transposition of the EIA Directive

9. Determining when EIA is required (Screening)

Option 1 Current situation

- 9.1 The local planning authority (or the Welsh Ministers in certain cases) should determine whether the project is of a type listed in Schedule 1 or Schedule 2 of the Regulations. If it is listed in Schedule 1, an assessment is required in every case. If the project is listed in Schedule 2, they should consider whether it is likely to have significant effects on the environment (a screening decision).
- 9.2 A request for a screening opinion in relation to an application for planning permission must be accompanied by—
- a plan sufficient to identify the land;
 - a brief description of the nature and purpose of the development and of its possible effects on the environment; and
 - such other information or representations as the person making the request may wish to provide or make.
- 9.3 The LPA should take this information along with Schedule 3 of the Regulations that lists factors that have to be taken into account when determining whether these projects are likely to have significant environmental effect. Having completed the screening exercise, the local planning authority must provide a screening opinion, indicating either that an assessment is required (a 'positive screening opinion') or is not required ('a negative screening opinion'). Where a planning application is submitted without an ES, and a screening opinion or screening direction has not previously been issued, the authority must screen that development as part of the processing of the application.

Option 2: Information provided by the developer

- 9.4 The existing ability of the developer to request a screening opinion from the LPA is retained. However the Directive now requires the developer to provide information on the characteristics of the project and its likely significant effects on the environment. The developer must also take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to European Union legislation. Finally, the developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

Option 1: Do nothing

Costs to business/industry

- 9.5 Where a developer seeks a screening opinion, they may request this from the LPA by making a formal request. This should be accompanied by providing certain information. The statutory information required is minimal and developers will often provide additional information to assist the LPA to screening an application. The actual cost to the developer of producing the information for a screening opinion is considered to be £400¹ - upscaled to 2016 prices of £430 - per application to prepare.

Cost to LPAs/Welsh Ministers

- 9.6 Where required, the body undertakes a screening assessment on projects. Evidence suggests that straight forward cases that clearly do not require screening often take a half to full day of work which equates to approximately £250 to £500². For more borderline schemes or contentious cases this could rise to £2,000 for a screening opinion. Where further information is required to make the determination the LPA may request that information from the developer.

Benefits to business/industry

- 9.7 Where a developer seeks a screening opinion, they may request this from the LPA by making a formal request. The developer is able to choose, beyond a statutory minimum, how much information to provide to the LPA.

- 9.8 Case law³ has accepted that mitigation measures designed to prevent significant environmental effects can be taken into account at the screening stage. This means that projects will not be subject to an EIA where, by nature of their design, will not have a significant impact on the environment. Meaning that developers may seek to include this within the project design so that certain development does not undergo EIA.

Benefits to LPAs/Welsh Ministers

- 9.9 There are no identified benefits from the current situation. Often developers provide more information than the statutory minimum to assist the screening process.

Option 2 Information provided by the developer

Cost to business

- 9.10 The detailed list of information to be provided for a screening request is specified in Annex IIA. AMEC⁴ has estimated that the additional work required

¹ Addison & Associates with Arup. Research on the Costs and Benefits of Environmental Impact Assessment. Research for the Department for Communities and Local Government, 2010

² Addison & Associates with Arup. Research on the Costs and Benefits of Environmental Impact Assessment. Research for the Department for Communities and Local Government, 2010

³ TWS v Manchester City Council 2013.

⁴ AMEC, Cost implications of Directive 2014/52/EU, research for the Department for Communities and Local Government, 2014

for developers to provide information for a screening as between 5% and 15%, varying on a case-by-case basis. Taking the current cost of £430, the additional cost of providing the information will be £21.50 to £64.50. Taking an average of 1700⁵ screening opinions issued each year by LPAs the cost increase is between £36,550 and £109,650

- 9.11 Providing clarification that where applications avoid significant environmental effects by the inclusion of mitigation are not subject to EIA processes may encourage its greater use and reduce the number of EIAs. It is not possible to determine at this stage how many less EIAs will result from this clarification. Where this does happen, it is possible that the costs associated with producing an ES will be saved. The Arup report identified that the costs associated with producing EIA reports can vary significantly from £2,330 to £150,308 (with an average cost of £50,000 (just under the average of the case studies).

Cost to LPAs/Welsh Ministers

- 9.12 The intention is that screening is subject to clear upfront requirements in terms of the data to be provided. This should help authorities determine if projects are likely to have significant effects on the environment. As most screening opinions are accompanied by the additional information necessary the cost to LPAs and the Welsh Ministers is still considered to equate to £250 to £500⁶.

Benefits to business/industry

- 9.13 Where a developer seeks a screening opinion, they may request this from the LPA by making a formal request. The developer is able to choose how much information to provide. In providing more than the very basic information the LPA is able to more fully determine the environmental impact of the project. This should mean that more accurate opinions are made by the LPA, benefitting the developer.

- 9.14 Confidence that mitigation may be taken into account at the screening stage, should mean that developers design schemes from the outset taking into account ways to avoid significant impacts.

Benefits to LPAs/Welsh Ministers

- 9.15 Providing more information will assist the LPA in the screening process. This should ensure that screening decisions are made swiftly and efficiently, meaning resources can be used elsewhere in the planning function.
- 9.16 Codifying case law that mitigation may be taken into account at the screening stage may mean LPAs are more confident in providing negative screenings on development.

10. Consultation in the decision making process

⁵ The number of major applications submitted plus the total number of applications submitted in National Parks.

⁶ Addison & Associates with Arup. Research on the Costs and Benefits of Environmental Impact Assessment. Research for the Department for Communities and Local Government

Option 1 Do nothing

- 10.1 Where a project is EIA development, the applicant must compile the information reasonably required to assess the likely significant environmental effects of the development. The information is known as an Environmental Statement.
- 10.2 After submission of the application for determination, the application and Environmental Statement is publicised. This provides statutory 'Consultation Bodies' and the public the opportunity to give their views about the proposed development and the Environmental Statement. The Environmental Statement, together with any other information which is relevant to the decision, comments and representations made on it, must be taken into account in deciding whether or not to give consent for the development.

Option 2 consultation in the decision making process

- 10.3 The directive retains the provisions that following submission of an environmental statement, there should be consultation with the public and statutory consultation bodies. There is the additional requirement that the public should be informed electronically, with the information also available online and the public consultation should last for at least 30 days.

Option 1 Do nothing

Costs to business/industry

- 10.4 There are limited costs to business/industry. The publicity and consultation requirements for EIA applications lies with the determining body except where an ES is submitted after an application has been made. In such circumstances the applicant is required to undertake newspaper advertisement, where the cost is £1260 per advertisement.

Costs to LPAs/Welsh Ministers

- 10.5 The Regulations provide for the environmental statement to be publicised via newspaper and site notice, with a minimum consultation period of 21 days. Where the LPA is required to undertake newspaper advertisement the cost is £1260 per advertisement.

Costs to the public

- 10.6 There are no direct costs to the public as the information is available on the public planning register. Third parties may need to make arrangements to view the documentation (such as travel etc). It is not considered possible to quantify the cost in undertaking these actions

Benefits to business/industry

- 10.7 Effective consultation enhances the quality of applications, by addressing any issues or any misunderstandings to the benefit of the project. If conducted well, engagement should improve the stakeholders trust and by allowing the views of the local people to be voiced, help with acceptability and 'buy-in' of a project in the community.

Benefits to LPAs/Welsh Ministers

- 10.8 Effective consultation enhances the quality of applications. If conducted well, engagement should improve the stakeholders trust and enhance the LPAs reputation. Community consultation allows the views of the local people to be voiced, which help with acceptability and 'buy-in' of a project in the community.

Benefits to the public

- 10.9 The community are able to engage in the decision making process about environmental decisions that affect them.

Option 2 consultation in the decision making process

Costs to business/industry

- 10.10 There are no costs to business/industry. The publicity and consultation requirements for an EIA applications lies with the determining body except where an ES is submitted after an application has been made. In such circumstances the applicant is required to undertake newspaper advertisement the costs will remain at £1260 per advertisement. The requirement to publicise, and make the information available, electronically is met by the LPA.

Costs to LPAs/Welsh Ministers

- 10.11 The publication via newspaper and site notice will remain at £1260 per advertisement. The current minimum consultation period is 21 days. Extending this period to 30 days is not expected to have any impacts. Local planning authorities have up to 16 weeks to determine an EIA application which includes the time for the consultation period. At present, should comments be submitted after the 21 day consultation period the LPA should take these into account if they raise material considerations.
- 10.12 The majority of LPAs make applications and their supporting documents available online. There is no additional cost to these authorities as a result of the new requirements. Where an authority does not make information available electronically, they will experience a cost. The up-loading of an application on the authority's website is considered to equate to half an hours work. Where further information is also submitted after the application, the LPA will incur further costs (calculated at the same rate). As it is not possible to determine the number of revisions that would be made, the range of costs per application is considered to equate to:

<i>Planning Assistant / Planning Technician / Research Officer costs</i>			
<i>Average Salary</i>	<i>On Costs</i>	<i>Total</i>	<i>Hourly wage</i>
<i>£23,190</i>	<i>£12,754</i>	<i>£35,944</i>	<i>£19.75</i>
Total costs	£19.75 - £79 per application.		

Costs to the public

- 10.13 There is no direct cost to the public. As information is available electronically, third parties may no longer need to make arrangements to view the documentation. It is not considered possible to quantify the cost in undertaking these actions. Where internet access does not allow a third party to access the documentation, it will still be made publically available on the planning register.

Benefits to business/industry

- 10.14 Ensuring effective consultation can benefit the developer as this ensures all opinions are raised on an application. This may help in achieving greater project understanding and increased support.

Benefits to LPAs/Welsh Ministers

- 10.15 Ensuring effective consultation can benefit the LPA as this ensures all opinions are raised on an application. This may help in achieving greater project understanding and the potential for increased participation in the planning functions of the LPA.

Benefits to the public

- 10.16 Increased publicity through online media, an increased period of time in which to make representations and access to the ES electronically should enhance the opportunities for the public to be involved in the decision making process. Where internet access does not allow a third party to access the documentation, it will still be made publically available on the planning register.

11. Co-ordination

- 11.1 [This section will be completed after the conclusion of the consultation exercise – your views are welcomed on the costs of co-ordination]

12. Monitoring of significant environmental effects

Option 1 Do nothing

- 12.1 The EIA Directive contains no explicit monitoring requirements, however these are implicit in the requirements of the Directive. Therefore environmental effects, as well as the delivery of commitments in the ES, can be monitored. Competent authorities can (and do) secure monitoring through attaching monitoring conditions to consents.

Option 2 Monitoring of significant adverse effects

- 12.2 The Directive requires that the decision to grant development consent should include, where appropriate, monitoring measures. The areas to be monitored and the duration of the monitoring should be proportionate to the nature, location and size of the project and the significance of its effects on the environment. Existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication.

Option 1 Do nothing

Costs to business/industry

- 12.3 The impacts of monitoring will be down to the discretion of LPAs as to what should be monitored and for how long. This is usually implemented by way of a planning condition, and therefore only be introduced where necessary. As the amount of monitoring required on a development can be varied, to give an indication of costs incurred, specific project costs are provided below.

- 5 year monitoring programme for a consented wind turbine scheme: The scope of work includes water quality monitoring, aquatic invertebrate sampling, botanical monitoring and a post-construction annual report for Year 1; along with bird survey monitoring and monitoring reports for Years 1, 3 and 5. Total cost - £28,000.

Costs to LPAs/Welsh Ministers

- 12.4 The LPA will receive the monitoring data, which may incur a minor administrative cost to record and process the information. These should not have a cost to the LPA above the normal management of a development after it has received consent.

Costs to the public

- 12.5 There are no costs to the Public.

Benefits to business/industry

- 12.6 Monitoring presents an opportunity both to control environmental effects and to learn from the process and cause-effect relationships. Information generated by this process can contribute to the improvement of future EIA practice, for example, by enabling more accurate predictions to be made.

Benefits to LPAs/Welsh Ministers

- 12.7 Without any form of monitoring, EIA would operate as a linear rather than an iterative process, and an important step towards achieving improved environmental protection will also be omitted.

- 12.8 Monitoring presents an opportunity both to control environmental effects and to learn from the process and cause-effect relationships. Information generated by this process can contribute to the improvement of future EIA practice, for example, by enabling more accurate predictions to be made.

Benefits to the public

- 12.9 Monitoring presents an opportunity both to control environmental effects and to learn from the process and cause-effect relationships. It allows interested parties to identify whether mitigation measures have achieved their objective of reducing or eliminating impacts and potentially seek remedial action.

Option 2 Monitoring of significant environmental effects

Costs to business/industry

- 12.10 Monitoring measures for EIA projects are already required for projects. Making explicit reference in the regulations may increase the amount of monitoring that is requested by LPAs. It is anticipated that the amount of monitoring requested will increase by 5 to 15%.

Costs to LPAs/Welsh Ministers

- 12.11 The LPA will receive the monitoring data, which may incur a minor administrative cost to record and process the information to the correct location. These should not have a cost to the LPA beyond normal practices for the management of a development after it has received consent.

Costs to the public

- 12.12 There are no costs to the Public

Benefits to business/industry

- 12.13 Without any form of monitoring, EIA would operate as a linear rather than an iterative process, and an important step towards achieving environmental protection will also have been omitted.
- 12.14 Monitoring presents an opportunity both to control environmental effects and to learn from the process and cause-effect relationships. Information generated by this process can contribute to the improvement of future EIA practice, for example, by enabling more accurate predictions to be made.

Benefits to LPAs/Welsh Ministers

- 12.15 Without any form of monitoring, EIA would operate as a linear rather than an iterative process, and an important step towards achieving environmental protection will also have been omitted.
- 13.10 Monitoring presents an opportunity both to control environmental effects and to learn from the process and cause-effect relationships. Information generated by this process can contribute to the improvement of future EIA practice, for example, by enabling more accurate predictions to be made.

Benefits to the public

- 12.16 Monitoring presents an opportunity both to control environmental effects and to learn from the process and cause-effect relationships. It allows interested parties to identify whether mitigation measures have achieved their objective of reducing or eliminating impacts and potentially seek remedial action.

Other related matters

13. Third party screening requests

Option one – Do nothing

- 13.1 Continue to allow third party screening requests to be made at any time within the EIA process, meaning that where they are made late within the application process, a LPA will not determine the application until the outcome of that screening direction is known.

Option two – make provision for third party screening requests

- 13.2 Amend the legislation to insert provision to ensure that third party screening requests occur early in the process so that the outcome (whether an EIA is or is not required) is known to all stakeholders. This will provide certainty to all parties and ensure applicants and LPAs do not undertake abortive work on an application.

Option 1 – do nothing

Costs to LPAs/Welsh Ministers

- 13.3 The third party screening process can be exploited to frustrate and delay the system. Where a LPA has not determined an application within a prescribed period, then this can effect their performance, and potentially lead to the refund of the planning fee.

Costs to business/industry

- 13.4 The third party screening process can be exploited to frustrate and delay the system. Although the costs incurred are very difficult to measure, estimates have been made for the UK as a whole. The estimates range between £700 million to £3 billion per year cost as a result of delay in the planning application determination process as a whole.

Costs to the public

- 13.5 There are no costs to the public.

Benefits to business/industry

- 13.6 There are no benefits.

Benefits to LPAs/Welsh Ministers

- 13.7 There are no benefits

Benefits to the public

- 13.8 The public are able to make a third party screening request at any time during the application process. This means an interested party is able to satisfy themselves that the LPA (as competent authority) has actually determined, in accordance with the rules laid down by national law that an EIA is or is not necessary.

Option 2 – make provision for third party screening requests

Costs to LPAs/Welsh Ministers

- 13.9 Third party screening requests cannot be used to delay the process. LPAs are able to determine applications within the prescribed period and provide certainty as to the development that is consented in their area. This also reduces the likelihood that planning fees are refunded.

Costs to business/industry

- 13.10 Third party screening requests cannot be used to delay the process. LPAs are able to determine applications within the prescribed period and developers can undertake work on consented applications. This should mean that the consenting process is not a reason for delay, and the associated cost of delay are not incurred.

Costs to the public

- 13.11 There are no financial costs to the public.

Benefits to business/industry

13.12 Third party screening requests occur early in the process so that the outcome (whether an EIA is or is not required) is known to all stakeholders. This will provide certainty to all parties and ensure applicants and LPAs do not undertake abortive work on an application.

Benefits to LPAs/Welsh Ministers

13.13 Third party screening requests occur early in the process so that the outcome (whether an EIA is or is not required) is known to all stakeholders. This will provide certainty to all parties and ensure applicants and LPAs do not undertake abortive work on an application.

Benefits to the public

13.14 The public is still able to make a third party screening request during the application process, although opportunity to do this at a time of their choosing will be reduced. In allowing LPAs to determine applications (as they are not waiting on a screening direction) this provides certainty about the development that is consented in a LPA area.

14. Make provision to apply EIA procedures to Section 141

Option one – Do nothing

14.1 The EIA Directive requirement to consider environmental information before granting development consent can be applied directly in the absence of transposing legislation, as in the case of Section 141 of the Town and Country Planning Act 1990. However, the failure to specifically list the consent category in the Regulations may lead to inconsistent practice. Failure to transpose may lead to infraction proceedings against the Welsh Government.

Option two – make provision to apply EIA procedures to Section 141

14.2 Amend the legislation to insert procedures for consent falling within section 141 that grants EIA development. This will provide transparency and consistency between the Regulations and Directive, ensuring consistent practice is followed. Full transposition of the Directive will also prevent infraction proceedings against the Welsh Government.

Option 1 – do nothing

Costs to Welsh Ministers and applicants

14.3 The Directive applies directly and therefore projects granted under Section 141 should be subject to the existing EIA process. As there is not explicit drafting, there is the possibility that the Regulations may be misapplied.

14.4 Should the Directive be incorrectly applied the decision may be subject to legal challenge. Should an application be made to the Court, and they are satisfied that there was a legal error in the decision to grant consent, they have a discretion as to whether or not to quash the planning permission. Costs associated with defending a decision or reapplying for the consent should the decision be quashed may be incurred.

Costs to Parties involved in the process

- 14.5 The Directive applies direct and therefore projects granted under Section 141 should be subject to the EIA process. As the consent mechanism is not included in the Regulations there is the possibility that the Regulations may be misapplied.
- 14.6 Should the Directive be incorrectly applied third parties may seek a legal challenge on the process or decision. Should the third party make an application to the Court they may bear these costs, which can be considerable.

Benefits to Welsh Ministers/Applicants

- 14.7 There may be uncertainty about the application of the EIA process to these consents. This uncertainty may lead to confusion and additional time spent considering the matter to prevent the miss-application of Regulations. Due to the nature of the consent, the numbers who may need to consider the application of the Directive to their scheme is limited.

Benefits to Parties involved in the process

- 14.8 There may be uncertainty about the application of the EIA process to these projects. This uncertainty may lead to confusion and additional time spent considering the matter to prevent the miss-application of Regulations. Due to the nature of the consent, the numbers who may need to consider the application of the Directive to their scheme is limited.

Option 2 – make provision for Section 141

Costs to Welsh Ministers / applicants

- 14.9 As these projects are already subject to the existing EIA regime (as the Directive applies direct), there is no financial cost of adding provisions to the Regulations.
- 14.10 The addition of provisions to the legislation should prevent the incorrect application of the Directive to projects. This will reduce the risk of legal challenge to decisions and the associated costs of defending decisions.

Costs to Parties involved in the process.

- 14.11 As these consents are already subject to the existing EIA regime (as the Directive applies direct), there is no financial cost of adding provision to the Regulations.

Benefits to Welsh Ministers /applicants

- 14.12 The addition of provisions to the legislation provides legal clarity that these consents fall within the EIA regime. As these are little used powers, clarity in the legislation may assist those who wish to take forward such action.

Benefits to Parties involved in the process

- 14.13 The addition of provisions to the legislation provides legal clarity that these consents fall within the EIA regime. As these are little used powers, clarity in the legislation may assist those who wish to take forward such action.

15. Analysis of Other Effects and Impacts

Equality of Opportunity

- 15.1 The proposed amendments to the EIA regime have equal benefit across all sectors of society. The proposed requirement for increase publicity and access to information will improve understanding of the decision process and therefore improve transparency for all members of society and enhance equality of opportunity.

Sustainable Development

- 15.2 The EIA Directive seeks to ensure that the environmental impact of development is considered at the earliest possible point of the development process. The Environmental Statement, together with any other information which is relevant to the decision, comments and representations made on it, must be taken into account in deciding whether or not to give consent for the development. This will help to ensure sustainable development takes place.

The Welsh Language

- 15.3 The proposed changes to the EIA Regulations will have no impact on the Welsh language and Welsh communities. The changes seek to transpose Directives 2014/52/EU into the Welsh EIA Regulations which will help to prevent infraction proceedings from the European Commission. The Directive does not address issues of language and so there is no scope to go beyond its requirements to promote, support and develop the Welsh language.

Rights of Children and Young People

- 15.4 Due regard has been given to the United Nations Convention on the Rights of the Child (UNCRC) and it has been determined that there is no effect. Two key aspects of the Convention are that respect must be had for the views of children and that they have the right to freedom of expression. All consultation responses will be considered equally in response to the proposed changes, in line with these objectives. Furthermore, electronic publicity and access to information will assist in young people's understanding of, and participation in, the EIA process.

Annex 1: Main amendments to Directive 2011/92/EU as a result of Directive 2014/52/EU

Provision in Directive 2011/92/EU as amended	Impact of provision
1(2) definition of “environmental impact assessment”	This definition is based on the case-law of the Court of Justice of the EU (C-50/09). The process set out is already implemented through the EIA Regulations and so there are not expected to be any new impacts arising from inclusion of the definition in the transposing regulations
Art. 1(3) Change to national defence and civil emergency project exemption	<p>Defence was clarified on the basis of the case-law of the Court of Justice of the EU (C-435/97). National defence is a non-devolved matter and therefore is not covered in these Regulations.</p> <p>The 2014 EIA Directive now provides an exemption where projects, or parts of projects, having the response to civil emergencies as their sole purpose from the provisions, if they deem that such application would have an adverse effect on those purposes. As the additional exemption is very limited in scope there are not expected to be any new impacts arising from inclusion of the exemption in the transposing regulations.</p>
Art 2 (3) Joint/Coordinated approaches	Within main RIA
Art 3 - Expansion of article to clarify the factors to be considered where a project is likely to have significant effects	The range of issues has not materially changed. For example, the term ‘human beings’ has been replaced by ‘population and human health’ and ‘fauna and flora’ by ‘biodiversity’. These amendments are considered to clarify the existing legislative position, and will not have an impact.
Art 4(3) Member states can set screening thresholds	The Regulations already set out ‘exclusion thresholds’ in Schedule 2, below which Environmental Impact Assessment does not need to be considered (subject to the proposal not being in a sensitive area). As these thresholds will remain, there are no new impacts arising from transposing regulations.
Art 4(4) - Developer must provide the information on project specified in new	See main RIA

Annex IIA and take into account available results of other relevant assessments carried out under other European legislation	
<p>Art 4(5) – The local planning authority must make its determination, on the basis of the information provided by the developer taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to other Union legislation.</p> <p>The determination shall be made available to the public</p>	The LPA already take into account the information provided by the developer in reaching a decision. Regulation 4(6) and (7) already require that positive and negative screening decisions are provided to the public and so this will not have any additional impact.
Art 4(6) - Timeframe for screening opinion	Screening opinions are already required to be made within 21 days. The provision will not amend this timeframe and so there is not considered to be an impact to any party.
Art 5(1) - Developer must prepare and submit and EIA report	The developer must already prepare and submit an EIA report. The Article contains information that was previously within the annex to the Directive, which therefore has no material effect. The slight amendment to the wording is considered to provide clarity on the content and will not lead to an increase in the number or extent of EIAs.
Art 5(2) – Scoping opinions	Where a project is EIA development the developer, if they choose, may request a scoping opinion from the authority. The scoping opinion should identify the scope and level of detail of the information to be supplied by the developer in their environmental statement. The applicant is not bound to follow this advice, however as the LPA has identified this as information necessary to determine the application, and may request it at a later stage, the applicant is likely to provide it. The 2014 Directive retains the provision; however Article 5(1) now requires that the

	<p>environmental statement is based on that scoping opinion.</p> <p>The purpose of this change is to provide more certainty for the developer when preparing their environmental statement – and reducing concern that they may be asked to cover additional topics following submission of their application. It is therefore intended to reduce the size of some environmental statements.</p> <p>It is not anticipated that this provision will result in any additional burden.</p>
Art 5(3) – competent experts	<p>The term ‘competent’ is considered to be interpreted to mean persons who by virtue of their qualifications or experience have sufficient expertise to ensure the completeness and quality of the environmental statement. Most environmental statements prepared by someone with these attributes and there is unlikely to be an additional cost.</p> <p>Most local planning authorities have sufficient expertise within their planning teams to examine the environmental statement. They will also have available to them, the comments of the statutory consultation bodies, including Natural Resources Wales. It is therefore not expected that the changes will have any onerous impacts in practice.</p>
Art 6(1) – consultation	<p>Consultation is already required by the Regulations. The provision will not amend this process and so there is not considered to be an impact to any party.</p>
Art 6(2)- Informing the public electronically and by public notice of request for consent and that EIA application	<p>Within main RIA</p>
Art 6(3) - Making the information available to the public	<p>Within main RIA</p>
Art 6 (5) - Arrangements for informing the public	<p>Within main RIA</p>
Art 6(6) - Timeframes for informing the	<p>Within main RIA</p>

consultation bodies and the public and to participate in the decision making	
6 (7) - Timeframes for consulting public on EIA report	Within main RIA
Art 7(4) – trans boundary effects	This sub-paragraph is identical to Art. 7(4) of 2011/92/EU and therefore is already in national legislation.
Art 8a - Decision to grant consent must incorporate at least the reasoned conclusion, and environmental conditions and, where appropriate, monitoring measures	Within main RIA
Art 8a(2) - Stating reasons for refusing development consent	Article 24 - Written notice of decision or determination relating to a planning application of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 already requires decisions to state clearly and precisely the full reasons for the refusal. Therefore this provision therefore is already in national legislation.
Art 8a(4) - Ensure environmental conditions are implemented by the developer and determine procedures regarding monitoring significant adverse effects	Within main RIA
Art 8a(6) - Reasoned conclusion being up to date	This provision, although not explicit in the EIA Directive until now is already required in decision making. In practice the time between the competent authority’s “reasoned conclusion” and the actual decision should not be lengthy (may be e.g. LPA resolutions to grant “subject to finalisation of a s.106”). However, if there is a very significant period of after the resolution then it’s right for the LPA to reconsider environmental impacts.
Art 9(1) - Informing the public and consultation bodies	The Regulations already require that LPA should inform the public and other parties of final decisions, therefore this provision is already in national legislation.
Art 9a - Conflicts of interest	This new article is based on the case-law of the Court of Justice of the EU (C-

	<p>474/10). Further, LPAs are already subject to provisions with regard to conflict of interest within the Town and Country Planning General Regulations 1992.</p> <p>Therefore as this provision codifies case law and reinforces existing legislation this should not cause any additional burden on any parties.</p>
Art 10	<p>This paragraph is almost identical to Art. 2(1) of 2011/92/EU and therefore it should already appear in national legislation.</p>
Art 10a - Penalties for infringements of national provisions.	<p>Unauthorised development. The exercise of enforcement powers provided in the TCPA is at the discretion of local planning authorities. However, that discretion cannot over-ride the requirements of the EIA Directive. When considering whether to take enforcement proceedings local planning authorities must therefore consider whether the development is EIA development - ie whether it falls within Schedule 1 or 2 and is likely to have significant environmental effects - before it takes its decision. If the local planning authority concludes the development is EIA development, then its exercise of discretion will be limited by the need to comply with the legal requirements of the Directive. Therefore, the planning system already operates a system of penalties where unauthorised development has occurred. As this provision reinforces existing systems it should not cause any additional burden on any parties</p> <p>Environmental reports (and other information) that are misleading At present, is someone were to intentionally make a false certificate, or provide false information, intending by doing so to make a gain for themselves or another, it would constitute the offence of fraud by false representation. As such, legislation is already in place to provide a system of penalties for false or misleading information in EIA applications and this provision should not cause any additional burden on any parties.</p>