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To: Chief Planning Officers
cc. Statutory Consultees

1 February 2016

Dear Colleague

This letter provides information on a number of changes to the development management system on March 16th. The changes will cover the following areas of Planning:

- Development Management Procedures
- Permitted Development and Use Classes – Houses in Multiple Occupation
- Enforcement
- Environmental Impact Assessment Regulations

Development Management Procedures

The following [subordinate legislation](#) has been laid before the National Assembly for Wales today, and will come into force on the 16 March 2016.

- The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016 (“the Order”)
- The Town and Country Planning (Validation Appeal) (Written Representations Procedure) (Wales) Regulations 2016
- The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016

These bring into effect and provide the detail for various provisions set out in the Planning (Wales) Act 2015 (“the 2015 Act”). In addition a number of amendments have also been made to development management procedures set out in The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO) using existing powers in the Town and Country Planning Act 1990 (“the 1990 Act”), as part of implementing the Welsh Government’s wider positive planning programme.

An explanation of the main changes to the development management process is provided below. It is our intention to publish additional information in a

'Development Management Manual' in March to coincide with the coming into force of the above legislation.

Pre-Application Consultation

Detailed guidance on the requirement for pre-application consultation under Section 17 of the Planning Wales Act 2015 is contained in **Annex 1** to this letter.

It is important to note that whilst the provisions contained within the DMPWO for pre-application consultation in respect of applications for major development will come into force in March 2016 the requirement for applicants to submit the pre-application consultation report (PAC) will not be a validation requirement for applications made before 01 August 2016.

This transition period will allow prospective applicants who will be submitting after the 01 August to undertake pre-application consultation, and will place a duty on statutory consultees to provide substantive responses within 28 days to these requests. However, it will not prejudice applicants who are due to imminently submit a planning application, and would find that it would not be valid because the statutory requirements of the pre-application process have not been undertaken.

REFERENCE

Article 4 of the Order introduces a new Part 1A into the DMPWO in relation to pre-application consultation. Part 1A sets out the requirement to carry out pre-application consultation, how such consultation must be publicised, who must be consulted, a duty for specialist [statutory] consultees to respond to such a consultation, and the form and content of pre-application consultation reports.

Local Planning Authority Pre-application Services

The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016 require all local planning authorities (LPAs) in Wales to provide a statutory pre-application service.

Applicants must submit a completed pre-application advice enquiry form containing information on their proposal to enable a response from the LPA. As a minimum they will be required to provide:

- Name, address and contact details
- Description of the proposal (including an indication of increase in floor space, and/or number of new units proposed)
- Site Address
- Location Plan

- Fee

The fees that can be charged for statutory pre-application services are the same across Wales, although vary depending upon the size and scale of the proposed development:

Householder - £25

Minor development - £250

Major development - £600

Large major development - £1000

The regulations require LPAs to provide a written response to all valid pre-application enquiries within 21 days, unless an extension of time is agreed between the authority and applicant.

As a minimum, applicants for householder developments should expect to receive the following information within their written response:

- The relevant planning history of the site
- The relevant development plan policies against which the development proposal will be assessed
- Relevant supplementary planning guidance (i.e. design, conservation etc.)
- Any other material planning considerations
- An initial assessment of the proposed development, based on the information above

For all other development proposals, applicants should receive all the information outlined above, as well as whether any Section 106 or Community Infrastructure Levy contributions are likely to be sought and an indication of the scope and amount of these contributions.

Without payment of the appropriate fee, the LPA will be under no obligation to accept a pre-application enquiry form.

If, in the opinion of the LPA, a pre-application enquiry form is submitted without the correct fee, the LPA should explain to the applicant as soon as possible in writing that the pre-application service cannot begin until the correct fee is received and identify what payment is due.

If a fee is paid to the LPA but the pre-application enquiry is subsequently rejected as being invalid for any reason except for payment of an incorrect fee, the fee must be refunded.

A model template of a pre-application enquiry form is provided as **Annex 2** to this letter.

We intend to collect information on the number of enquiries received and the time authorities take to respond via the Development Management Quarterly Survey from end of March 2016.

REFERENCE

Section 18 of the 2015 Act inserts section 61Z1 (Wales: pre-application services) and section 61Z2 (Pre-application services: records and statements of services) into the 1990 Act. The Town and Country Planning (Pre-Application Services) (Wales)

Regulations 2016 make provision for:

- the provision of statutory pre-application services by LPAs in Wales;
- the retention of records of the pre-application services requested and provided; and
- publication on the LPA website of information on the type of pre-application services provided and details of the fees payable for the different types of development.

Design and Access Statements

The requirement for a Design and Access Statement (DAS) will change on the 16 March 2016. The requirement to submit a DAS with a planning application will only apply to the following:

- All planning applications for “major”¹ development except those for mining operations; waste developments; relaxation of conditions (section ‘73’ applications) and applications of a material change in use of land or buildings
- All planning applications for development in a conservation area² or World Heritage Site³ which consist of the provision of one or more dwellings or the creation of floorspace of 100 sq. m. (gross) or more.

For those planning applications that do not require a DAS, LPAs have the ability to request further information about the design during the pre-application and determination processes if it will assist them in making a decision on the application in light of development plan design policies. However, any information required must now be both material to the determination of the application, and reasonable relative to the nature and scale of the proposed development⁴.

Content of a Design and Access Statement

The DMPWO has been amended so that a DAS must:

- explain the design principles and concepts that have been applied to the development.

- demonstrate the steps taken to appraise the context of the development and how the design of the development takes that context into account.
- explain the policy or approach adopted as to access and how policies relating to access in the development plan have been taken into account
- explain how specific issues which might affect access to the development have been addressed.

The scope of a DAS should be agreed wherever possible at the pre-application stage of development to ensure all relevant issues are covered.

REFERENCE

Article 9 of the Order will substitute Article 7 of the DMPWO with a new version. This sets out that Design and Access Statements will be required for major development, or in a designated area (i.e. conservation area or World Heritage Site) for one or more dwelling or a building with a floor space greater than 100 square metres. This will only apply to planning applications made on or after the 16 March 2016.

¹“Major” development is defined in article 2 of the DMPWO.

²“Conservation Area” is defined in section 91 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) as an area designated under section 69 of that Act.

³“World Heritage Site” is defined as property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention Concerning the Protection of the World Cultural and National Heritage.

⁴Section 62(4A) of the 1990 Act now applies in Wales in respect of applications for planning permission made on or since 16 March 2016.

Invalid Applications: Notice and Appeal

Notice - Local Planning Authorities

New provisions that allow for an appeal against the decision of a LPA that an application is invalid come into force on 16th March. This provision applies to

both applications for planning permission and for any consent, agreement, or approval required by any condition or limitation subject to which planning permission has been granted.

If the LPA considers that an application for planning permission (or anything accompanying it) does not comply with a validation requirement (see Section 62 of the 1990 Act) they must give a notice to the applicant informing them that the application is invalid.

This notice must identify the particular requirements in question (in relation to Section 62 of the 1990 Act) and explain why the application does not comply with the validation requirements.

In the case of an application for a consent, agreement, or approval (required by any condition or limitation subject to which planning permission has been granted) the LPA must give notice that an application is not valid if they consider that the application does not comply with the terms of the planning permission, because the applicant has failed to include information in the application or to provide documents or other materials with it. The notice in this case must identify what information, documents or materials are required to be submitted.

A notice that an application is not valid must inform the applicant that they have a right to appeal to the Welsh Ministers via the Planning Inspectorate within two weeks of the date of the notice, and include the relevant contact details for the applicant to make an appeal if they so choose

A template model notice is attached as **Annex 3** to this letter to assist LPAs.

Making an Appeal – Appellants

Following the receipt of a notice that an application is invalid an applicant has a period of two weeks from the date of the notice to submit an appeal against the invalidation of their application to the Welsh Ministers.

The appeal must be made by submitting a form published by the Welsh Ministers (this will be available via the Welsh Government website before the 16 March 2016) and submit alongside it the following information:

- A copy of the notice served by the LPA
- A copy of the application made to the LPA
- A copy of the forms, documents, plans, drawings, statements, declarations, certificates, particulars or evidence which were submitted to the LPA in connection with the application
- A copy of the notice of the decision to grant planning permission (*note this is only relevant where the appeal relates to an application for a consent, agreement, or approval required by any condition or limitation subject to which planning permission has been granted*)

The appellant must also send to the LPA, as soon as reasonably practicable, a copy of the form (and documents) served on the Welsh Ministers so that the

authority is aware that an appeal has been made, and what information has been lodged in challenge to the notice The LPA therefore knows to take no further action on the application until the outcome of the appeal is known.

Whilst appeals can be lodged in hardcopy and by post, appellants are encouraged to submit all information electronically to make the process as efficient as possible.

When the Planning Inspectorate receive an appeal (on behalf of the Welsh Ministers) they will write to both the appellant and the LPA to inform them of the appeal reference number. The Welsh Ministers have set a target of 21 days for the Planning Inspectorate to consider and determine appeals against the invalidation of applications.

If the appeal is upheld then the information that is being sought by the LPA does not need to be submitted in order for the application to be found valid. If the appeal is dismissed the applicant must decide whether to submit the information or withdraw the application. The applicant is encouraged to contact the local planning authority to inform them of their intention, and the likely timescale.

Where an appeal is dismissed, and the information required has not been submitted within a reasonable timescale, or the applicant has simply not informed the LPA of their intentions, then the authority should return the application and associated fee to the applicant.

REFERENCE

Article 13 of the Order makes various amendments to Articles 8, 22, and 23 of the DMPWO to define the meaning of a valid application, and to introduce the information that must be given to an applicant where a (non-validation) notice is made by the local planning authority under Section 62ZA of the 1990 Act.

Article 13 also inserts Article 24C into Part 5 of the DMPWO. Article 24C prescribes how an applicant can appeal to the Welsh Ministers against a notice that their application is invalid and prescribes the time limit of two weeks to do so from the date of the notice.

The Town and Country Planning (Validation Appeal) (Written Representations Procedure) (Wales) Regulations 2016 prescribe how appeals are to be dealt with once received by the Welsh Ministers (or a person appointed by the Welsh Ministers), and include that the appeal notice and documents that accompany it comprise the appellant's representation, and the non-validation notice issued by the local planning authority comprise their representation in relation to the appeal.

Consultation in Respect of Certain Applications

Local Planning Authorities discretion to consult

Where a LPA receive an application for the approval of conditions, or reserved matters from the 16 March 2016 they will have the discretion to decide whether to consult statutory consultees for their views.

Where a LPA choose to consult they will be required to provide the following information to a consultee in order for it to be a valid consultation, and trigger the 21 day timescale for response:

- A copy of the application form
- The reference number allocated by the LPA to the original application
- Any drawings in connection with the relevant application; and
- Any report issued to the LPA in connection with the relevant application

The statutory consultation period of 21 days will commence either on the day on which the views of the consultee are sought, or where there is more than one document the day upon which the last of those documents is received by the consultee if sent at different times.

It is not proposed to require consultation to take place by a particular method (e.g. hardcopy or electronic) and therefore how each LPA currently chooses to consult statutory consultees should not need to change. However, where a LPA writes or emails statutory consultees to inform them that these details can be found on the authorities website (rather than email the information as attachments or provide hardcopies) the 21 day period will only be taken to have commenced when the last of these documents is available to view on that website.

Duty of Statutory Consultees to respond

Upon receiving a consultation from the LPA, a statutory consultee must provide a substantive response to the consultation within a period of 21 days unless they agree in writing with the LPA an alternative time period.

For the purposes of a consultation on the approval of conditions or reserved matters a substantive response is one which:

- States that the consultee has no comment to make
- States that the consultee has no objection to the matters which are subject to the consultation and refers the person to standing advice
- Advises of any concerns identified in relation to the matters which are the subject of the consultation, and how those concerns can be addressed; or
- Advises that the consultee objects to the matters which are the subject of the consultation and sets out the reasons for the objection.

Each statutory consultee must provide to the Welsh Ministers not later than 01 July each year (commencing July 2017) a report setting out their compliance with providing a substantive response within the statutory timescale.

REFERENCE

Article 8 of the Order inserts Article 15C and 15D into the DMPWO. Article 15C specifies that for the purposes of consultation under Section 100A of the 1990 Act there is a 21 day period for a statutory consultee to respond to the LPA once the document(s) have been received. Article 15D sets out the information that a LPA must provide to a statutory consultee, including a copy of the application form relating to the relevant application, the reference number allocated to the original application, any drawings in connection with the relevant application, and, any report in connection with the relevant application.

List of Statutory Consultees

The Order has updated Schedule 4 of the DMPWO to redefine the thresholds for consultation with existing statutory consultees, and has introduced Water and Sewerage Undertakers as a statutory consultee on certain planning applications.

Section 73 Applications (to remove or vary a condition)

Article 10 of the Order inserts Article 15ZA into Article 15 of the DMPWO 2012, which introduces the provision that the LPA may (not must as the case now) consult a statutory consultee (falling within Schedule 4 of the DMPWO) where a Section 73 application has been made.

Post Submission Amendments

From the 16 March any applicant who has submitted a major planning application, who wishes to amend their proposal, will be required to pay a fee of £190 when they submit an amendment.

Upon receipt of all the documents accompanying the amendment and the fee the local planning authority will have a statutory additional 4 week period (if required) in which to consider the new information before making a determination.

REFERENCE

Article 11 of the Order amends Article 22 (time periods for decisions) of the DMPWO, and makes provision for an additional 4 weeks before an LPA must notify an applicant of a decision where an amendment is made to the application prior to its determination.

Regulation 5 of The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2016 inserts regulation 16(A) [Fees for post submission amendments to major development applications] into the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 to require the payment of a fee of £190

Decision Notices

From the 16 March 2016 LPAs must ensure that new decision notices, issued on or after this date, specify the plans and documents (reference numbers) in accordance with which the approved development is to be carried out.

Where a planning application is approved on or after the 16 March 2016 the decision notice that grants the principle of the development (i.e. outline or full planning permission) is to be updated, and a revised version issued where any subsequent consents are given; such as details required by a condition (including reserved matters applications), or the removal or variation of a condition are approved.

As a minimum the revised version of the notice must include:

- the reference number that has been allocated to the subsequent application (for consent or approval of condition)
- the date on which the decision was made
- the effect of the decision (i.e. how the permission or condition has been changed)
- the name of the body that made the decision (in the event that such a consent or approval was made under an appeal)
- the revision number (so that it is clear that the notice has been amended)

There is nothing in the regulations precluding an LPA from including any additional informative on revised notices that they consider relevant to assist the applicant.

As a Section 73 application if granted results in a new planning permission a new decision notice must be issued rather than producing an amended

version of the original decision notice. Care is needed when subsequent applications are made in respect of the development, to understand against which permission (the original or that made through the section 73 application) that the applicant wishes to gain approval.

As each LPA has different software that produces decision notices we do not intend to impose a template setting out how this information should be set out. Therefore each Local Planning Authority should consider the most effective way for them to meet these mandatory requirements, aiming to make the revisions as easily understood by members of the public as possible.

For clarity the requirement to revise decision notices does not apply to any planning permission where a decision notice was issued prior to the 16 March 2016, therefore this will not apply retrospectively to existing planning permissions.

REFERENCE

Article 12 of the Order inserts Article 24A into the DMPWO which sets out that the person to be notified with a revised decision notice is the applicant, and that such a revised notice must include the reference number, date and effect of the decision, the name of the body that made the decision, and, the revision number.

Notification of Commencement of Development & Display of Notice

The requirement to notify the local planning authority of the commencement of development and to display a notice on site does not apply to planning permissions granted consent before the 16 March 2016.

Notification

When an developer who has the benefit of planning permission for major development wishes to commence their development, they must complete a 'Notification of initiation of development' form, which can be found in Schedule 5A of the DMPWO (**Annex 4**). They must submit the completed form to the relevant LPA (or authorities if a site straddles more than one authority area).

The submission of an incomplete form does not necessarily preclude an applicant from commencing development at the date specified. However, section 71ZB(5) of the 1990 Act ensures that any planning permission is only deemed to be granted subject to the duty to provide notification before development commences. Therefore, an incomplete form would represent a breach of condition and the applicant could be subject to enforcement action by the LPA.

Whilst LPAs are not required to acknowledge the submission of the notification notice a basic confirmation of receipt is encouraged so that developers can proceed knowing that the LPA is aware of when they will be starting on site.

As the requirement to notify is a condition to the planning permission, it is expected that the LPA will place a copy of the notice on the relevant planning file to demonstrate compliance with Section 71ZB(5) of the 1990 Act.

The notification form also acts as a check sheet as the developer needs to identify and confirm that all pre-commencement conditions have been complied with. LPAs should use the opportunity of a notice being served to review compliance with conditions and pursue enforcement action where necessary.

Display of a Notice

As part of the requirements for notification of development, applicants are also required to display a notice which confirms the granting permission of development at, or near the development site, and provide a plan indicating the site area of the development.

The site notice to be used is provided in Schedule 5B (**Annex 5**) of the DMPWO. The site notice must be displayed at the location on the notification of development notice.

The site notice must be displayed at all times while the development is being carried out (this is considered to be while the development is under construction), at the specified location from the date the development commences.

REFERENCE

Article 12 of the Order inserts Article 24B into the DMPWO. This specifies that for major development the notice to be given to a LPA before beginning any development must be in the form set out in Schedule 5A (a newly inserted Schedule) of the DMPWO (or in a form substantially to the like effect). Article 24B also specifies that the notice to be displayed (as required by Section 71ZB of the 1990 Act) at all times when development is being carried out must be in the form set out in Schedule 5B (a newly inserted Schedule) (or in a form substantially to the like effect). The site notice must be firmly affixed and displayed in a prominent place, be legible and easily visible, and, be printed on durable material.

Local Development Order

The Order amends the DMPWO to remove the restriction that a Local Development Order could not be made for development falling within Schedule 2 of the Planning (Environmental Impact Assessment) (Wales) Regulations 2016. It is envisaged that this will be most relevant to urban development projects.

Permitted Development and Use Classes Order

Houses in Multiple Occupation

[The Town and Country Planning \(Use Classes\) \(Amendment\) \(Wales\) Order 2016](#) has been made and comes into force on 25 February 2016. The related [Town and Country Planning \(General Permitted Development\) \(Amendment\) \(Wales\) Order 2016](#) (“the GPDO Amendment Order 2016”) has been laid before the National Assembly for Wales and will also come into force on 25 February 2016.

The Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 amends the Town and Country Planning (Use Classes) Order 1987 to:

- amend use class C3 (dwellinghouses) to:
 - include a definition of “single household” which applies to use class C3(a) only;
 - remove from the scope of use class C3(c) houses in multiple occupation falling in new use class C4; and
- introduce a new use class C4 (houses in multiple occupation).

New use class C4, subject to an exception, covers use of a dwellinghouse as a small House in Multiple Occupation as defined in section 254 of the Housing Act 2004. In broad terms, this use occurs where tenanted living accommodation is occupied by 3 to 6 people, who are not related and who share one or more basic amenities, as their only or main residence.

The GPDO Amendment Order 2016 amends Part 3 (changes of use) in Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 to give permitted development rights to changes of use from buildings used as a small scale houses in multiple occupation (new use class C4) to use as dwellinghouses (use class C3). The provision enables use class C4 to revert to use class C3 without requiring planning permission.

Enforcement

Article 5 of The Planning (Wales) Act 2015 (Commencement No. 3 and Transitional Provisions) Order 2016 brings the following sections of the 2015 Act in relation to planning enforcement into force on the 16 March 2016:

Section 32 - Power to decline to determine an retrospective application

LPA's can decline to determine an application for planning permission where an enforcement notice has been issued before the application is submitted (planning applications submitted on or after the 16 March). This has the effect of giving the LPA the discretion whether to consider the same issue twice, first in their decision to issue an enforcement notice and second through the consideration of a retrospective planning application.

Section 43 - Enforcement Warning Notices

An Enforcement Warning Notice (EWN) is intended for use where a LPA considers that an unauthorised development could potentially be made acceptable with control through the imposition of conditions if a planning application were made.

The serving of an EWN constitutes the taking of enforcement action under Section 171A of the 1990 Act, therefore further enforcement action can be taken in respect of the breach within four years of the initial notice being issued.

There is no right of appeal against an EWN, however if a retrospective application is submitted as a result of the EWN, an applicant does have the right to appeal either the refusal of planning permission, or the service of an enforcement notice, as with any other retrospective planning application.

Use of an EWN can effectively ensure that an acceptable form of development is achieved without the LPA having to over enforce, making for a swift conclusion to breaches of planning control compared to an enforcement notice, which can be subject to an appeal by the recipient of the notice.

A model EWN is provided as **Annex 6** to this letter.

Section 44 - Appeal against enforcement notice: deemed application for planning permission

Section 44 of the 2015 Act amends the process where an appeal is made under Section 174 of the 1990 Act. The appellant must now identify that they wish to make an appeal under ground (a) and pay a fee for the Planning Inspectorate to consider if planning permission should be granted. If they comply with these steps they will be deemed to have made a planning application.

This would not apply in cases where, before 16 March, an enforcement notice is issued under section 172 of the 1990 Act and not withdrawn under section 173A of that Act.

Section 45 - Restrictions on right to appeal against planning decisions

An appeal cannot be brought if planning permission was not granted under Section 174 of the 1990 Act against an enforcement notice if it would involve the granting of planning permission of matters stated in that notice. This restriction also applies where an enforcement notice is served in respect of a condition that ought to be discharged and it is not discharged under Section 177 at appeal.

Working alongside section 32 of the 2015 Act regarding retrospective applications, this restriction ensures that an enforcement appeal made under ground (a) provides the only route for the landowner/occupier to secure planning permission once an enforcement notice has been served.

This would not apply to an appeal made under section 78 of the 1990 Act before 16 March 2015.

Section 46 - Restrictions on right to appeal against enforcement notice

Section 46 of 2015 Act places a restriction on the right to appeal against an enforcement notice. Where an enforcement notice is issued after a decision to refuse planning permission has been upheld at an appeal for a related development, section 46 prevents an appeal being brought on the ground that planning permission should be granted for the breach identified by the enforcement notice, i.e. section 174(2)(a) of the 1990 Act. Furthermore, an appeal cannot be brought under section 174(2)(a) that a condition should be discharged if the enforcement notice was issued after a decision to grant planning permission subject the condition or limitation was upheld under section 78.

This would not apply in cases where, before 16 March 2015, an enforcement notice is issued under section 172 of the 1990 Act and not withdrawn under section 173A of that Act.

Environmental Impact Assessment Regulations

The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016

The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 (“the 2016 EIA Regulations”) have been laid before the National Assembly. These Regulations consolidate, update and replace the Town and Country Planning (Environmental Impact Assessment) Regulations 1999, as amended, (“the 1999 EIA Regulations”). These Regulations transpose, amongst other things, the European Directive 2011/92/EU, on the

assessment of the effects of certain public and private projects on the environment into the Welsh planning system.

The 2016 EIA Regulations contain two different commencement dates. All regulations except those relating to LDOs are scheduled to come into force on 01 March. Regulation 38, Schedule 5 and Schedule 9 paragraph 8(3) (which relate to Local Development Orders) will come into force on 16 March. This coincides with the amendments to the DMPWO made by the Order.

Screening thresholds

The regulations change the threshold where a screening should be undertaken on projects that fall within industrial estate development and the urban development project categories. Where projects fall within a sensitive area¹ all projects will continue to require screening.

The category for urban development projects now contains three criteria, where, if any of the criteria are exceeded by the project, the development should be screened for significant impacts on the environment.

In determining whether EIA is necessary for an individual project, the selection criteria set out in Schedule 3 to the 2016 EIA Regulations which are relevant to the proposed development, must be taken into account. LPAs should also be mindful of the amendment to the provision of negative screening decisions detailed below.

REFERENCE

The 2016 EIA Regulations raise and amend the thresholds in Schedule 2 at which certain types of development project will need to be screened in order to determine whether EIA is required under the Directive.

The threshold for industrial estate development projects is raised from areas exceeding 0.5 hectares to areas exceeding 5 hectares (in paragraph 10(a) of the table in paragraph 2 of Schedule 2).

In the case of urban development projects, the existing threshold of 0.5 hectares is raised and amended such that a project needs to be screened if—

- the development includes more than 1 hectare of development which is not dwellinghouse development; or
- the development includes more than 150 dwellinghouses; or
- the area of the development exceeds 5 hectares (see paragraph 10(b) of the table in paragraph 2 of Schedule 2).

A definition of “dwellinghouse” is inserted in regulation 2(1) for clarification in this context

¹Sensitive area is defined as any of the following—

(a) land notified under section 28(1) (sites of special scientific interest) of the Wildlife and Countryside Act 1981;

- (b) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949;
- (c) a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage;
- (d) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979;
- (e) an area of outstanding natural beauty designated as such by an order made under section 82(2) (areas of outstanding natural beauty) of the Countryside and Rights of Way Act 2000;
- (f) a European site within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2010;

Changes or extensions to existing projects

Changes or extensions to Schedule 1 or Schedule 2 development which may have significant adverse effects on the environment fall within the scope of the Directive. The 2016 EIA Regulations implement a judgment¹ from the High Court of Justice that any applicable screening threshold apply to the development as a whole once modified, and not just to the change or extension as provided in the 1999 EIA Regulations.

Where the change or extension itself would fall within one of the descriptions in Schedule 1, it constitutes a Schedule 1 development and EIA is always required. Otherwise, where the project as a whole exceeds the criteria set in Schedule 1 or 2, and if the project as changed or extended may have significant adverse effects on the environment, it is considered to be Schedule 2 development. A screening opinion is then required on whether the development is likely to have significant effects on the environment.

When the LPA undertake this screening exercise, they must consider the effect of the development as changed or extended. When considering the effect of this development it should be undertaken in the context that development consent already exists for the development as originally granted.

REFERENCE

Paragraph 13 of the table in paragraph 2 of Schedule 2 contains an amendment to the provisions relating to changes or extensions to existing development, so that the effects of the development as a whole once modified are considered.

¹High Court of Justice, R (on the application of Baker) v Bath and NE Somerset Council, 20109 J.P.L. 1498 [2009] A.C.D. 37.

Screening decisions

Having completed a screening exercise, the 2016 EIA regulations require the LPA to provide a screening opinion, indicating either that an assessment is required (a 'positive screening opinion') or is not required ('a negative screening opinion'). The 1999 EIA regulations did not require the provision of a negative screening opinion. The use of a checklist in undertaking screening exercises can assist in ensuring that opinions are proportionate to the development.

REFERENCE

Regulation 4(5) and (7) of the 2016 EIA regulations introduce a requirement for the reasons for negative screening decisions to be provided and placed on Part 1 of the register, to be available for public inspection.

Consultation requirements for multi-stage consents where the Environmental Statement remains valid

The 2016 EIA regulations require applications for multi-stage consents to be screened to

- (i) to check if EIA is needed when it had not been required at outline stage; and,
- (ii) to check if additional environmental information is required at the subsequent consent stage (i.e. an application for approval of reserved matters) when an Environmental Statement (ES) had already been produced.

This was a requirement in the 1999 EIA regulations. Where an application triggers either (i) or (ii) the public consultation procedures set out in the regulations apply to the ES. Where the environmental statement previously provided remains fit for purpose the public consultation process does not need to be repeated.

REFERENCE

Regulation 8 of the 2016 EIA Regulations limits the requirement for subsequent applications to be subject to the EIA process to those cases where the development in question is likely to have significant effects on the environment which were not identified at the time that the initial planning permission was granted.

European Directive 2009/31/EC on the Geological Storage of Carbon Dioxide

Paragraph 21 of Schedule 1 of the 2016 EIA Regulations includes sites for the geological storage of carbon dioxide. Installations for the capture of carbon

dioxide streams for the purposes of geological storage are included in order to implement requirements in the Directive on the Geological Storage of Carbon Dioxide (Directive 2009/31/EC)

Provide for EIA where LPAs make LDOs for development schemes that comprise Schedule 2 EIA development

Regulation 38 of the 2016 EIA Regulations requires a LPA who propose to make a LDO, to decide whether development is EIA development; and if it is, to take certain steps to enable them to take the environmental information into consideration before making the order.

Modification and discontinuance orders

Regulation 39 applies when a LPA or the Welsh Ministers propose to make either a section 97 order under section 97 or 100 of the 1990 Act, or an order under section 102 or 104 of that Act.

Developments of National Significance

Regulations 27 to 36(2) are provisions relating to applications for planning permission made directly to the Welsh Ministers.

Summary of changes

Some of the main changes that will affect LPAs are summarised in the table below:

SUMMARY OF ACTIONS
From 25 February LPAs must: <ul style="list-style-type: none">• Determine planning applications for changes of use to Class C4: Houses in Multiple Occupation• Take action against unauthorised changes of use that are unacceptable in planning terms in relation to the new use class.
From 1 March LPAs must: <ul style="list-style-type: none">• Use the new screening thresholds for industrial estate and urban development projects• Apply the revised project categories for changes or extensions to EIA projects and for projects concerning the geological storage of Carbon Dioxide• Provide reasons for negative screening opinions• Check whether additional environmental information is required at the subsequent consent stage

- Consider the need for EIA when preparing modification and discontinuance orders

From 16 March LPAs must:

- Provide pre-application services when requested to do so
- Issue a notice if an application is found to be invalid
- Apply the revised thresholds for statutory consultees including the addition of water and sewerage undertakers
- Charge for post-submission amendments
- Revise decision notices to reflect any subsequent consents
- Receive notification from developers that they intended to commence development on site and pursue enforcement action where necessary

From 16 March LPAs may:

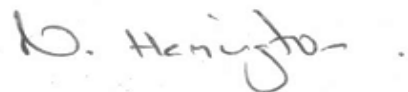
- Consult statutory consultees in respect of applications for the approval of conditions or reserved matters
- Decline to determine retrospective applications where an enforcement notice has been served
- Serve an enforcement warning notice
- Grant an LDO for a category of development falling under Schedule 2 of the EIA Regulations

From 1 August developers must:

- Undertake pre-application consultation for planning applications for major development
Provide a report of pre-application consultation in order to submit a valid planning application for major development

If you have any queries regarding any of these provisions please contact Hywel Butts (Head of Development Management) in the first instance.

Yours sincerely



Neil Hemington

Prif Gynllunydd | Chief Planner

Cyfarwyddiaeth Cynllunio | Planning Directorate

Yr Adran Cyfoeth Naturiol | Department for Natural Resources