

Consultation reference: WG23953

Consultation Response Form

Proposed changes to the Environmental Impact Assessment Regulations and Local Development Orders

We would like your views on our proposals to make changes to the Environmental Impact Assessment Regulations and Local Development Orders.

Please submit your comments by 18/06/2015.

If you have any queries on this consultation, please email: planconsultations-f@wales.gsi.gov.uk or telephone Alan Groves on 029 2082 5362.

Data Protection

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 or tick the box at the end of this form. 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 If someone has asked for their name and address not to be published, that is an important fact we would take into account.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be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published.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.

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Proposed changes to the Environmental Impact Assessment Regulations and Local Development Orders		
Date of consultation period: 26/03/2015 – 18/06/2015		
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Type <i>(please select one from the following)</i>	Businesses/ Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input checked="" type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you agree that the screening thresholds for urban development projects and industrial estate projects, as set out in Schedule 2 of the EIA Regulations, are too low?	Yes	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

Natural Resources Wales support in principle the revised thresholds. We recognise that there are some projects that are subject to Environmental Impact Assessment that are sometimes unnecessarily accompanied by overly complex supporting statements. Natural Resources Wales wishes to see an efficient process of assessment that is proportionate to the effects of development being proposed. However, we advise that if the screening thresholds are increased, it will be important to set out clear guidance to Local Planning Authorities that all environmental impacts, including cumulative impacts, should continue to be thoroughly assessed and taken into account in decision making, irrespective of the need for an Environmental Impact Assessment. We would be happy to advise on appropriate wording for any future guidance. Without this, there is a risk that some small, but environmentally harmful projects, would not be properly assessed as a result of a higher screening threshold.

The retention of the commitment in paragraph 15 to screen all Schedule 2 ‘urban development projects’ that are located in a ‘sensitive area’, irrespective of their size, is welcomed. We advise that screening of projects should also take place for all projects located partly within a sensitive area. We would also welcome a clear commitment that the new regulations require all Schedule 2 ‘industrial estate projects’ located within sensitive areas to be screened. Similar provisions are already in force in England (as of 6th April 2015). The imposition of the revised thresholds will bring Wales in to line with England.

Whilst we welcome the proposals to screen all Schedule 2 urban development projects located within sensitive areas, we advise that urban development and industrial estate projects outwith of sensitive areas can still lead to likely significant effects on the setting of some sensitive areas such as National Parks and Areas of Outstanding Natural Beauty. We advise that the EIA Directive and rulings by the European Court identify that Article 2(1)

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states “that projects likely, by virtue inter alia of their nature, size or location; to have significant effects on the environment are to be subject to an impact assessment”. Natural Resources Wales, therefore, considers that the potential effects on sensitive areas from a development project should be considered at the screening stage, regardless of whether the proposed project is “...in, or partly in...” the defined sensitive area. Screening for likely significant effects, so that all potential environmental impacts on sensitive areas arising from development are properly assessed, ensures that Natural Resources Wales continues to be consulted where Environmental Impact Assessment is required and that we can advise on the appropriate protection for the natural environment, in line with relevant legislation and policy.

Q2	Do you agree with our proposed screening thresholds?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: We have no further comment here.				

Q3	Do you have any comments on the proposed approach to addressing changes or extensions to Schedule 2 development?	Yes	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: The proposed changes reflect recent case-law (Baker judgement) and we support this provision. The provision seeks to amend paragraph 13 (a) (i) of Schedule 2 to the Environmental Impact Assessment Regulations so that references to thresholds apply to the whole development, as modified by the change or extension, and not just the change or extension itself.			

Q4	Do you have any comments on the proposed approach to addressing changes or extensions to Schedule 1 development?	Yes	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: These proposals also reflect recent case-law (Baker judgement) and we support the proposals in principle. However, Natural Resources Wales consider that more guidance is required to provide clarity and certainty on what information should be required from applicants at the screening stage to enable the decision maker to make a judgement on the likelihood of significant environmental effects. We feel that without guidance there is some ambiguity whether there will be sufficient information at the screening stage to enable a local planning authority to make a judgement on significance of effects.			

Q5	Do you have any comments on the proposal to	Yes	No
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	amend the EIA Regulations to require reasons to be provided for all screening opinions and screening directions?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Comments:
 We support this proposal as it provides transparency in decision making. Transparency in decision making is one of Natural Resources Wales' key values. Our view is that the new requirements help to enhance existing expectation of Local Planning Authorities' role.

Q6	Do you agree that, in the case of a subsequent application (e.g. reserved matters application), where an environmental statement was provided with the original outline application and remains fit for purpose, there is no merit in repeating the public consultation process?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:
 Natural Resources Wales support this provision in principle. We agree that there is little value in requiring the submission of a further Environmental Statement and going through a further public consultation exercise where sufficient detail was provided at the outline stage. However, we would recommend that guidance is prepared to provide clarity and certainty on when a further public consultation would be required for example where insufficient information is provided at the outline stage, where further information becomes available or the scenario was not set out within a Rochdale Envelope at the outline stage.

Q7	Do you have any comments on the proposed approach to implementing the Geological Storage Directive?	Yes	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:
 We have no comments to make regarding this proposal.

Q8	Should the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPO) and the EIA Regulations be amended in order to allow LDOs to grant planning permission for Schedule 2 development?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:
 We welcome this provision in principle subject to appropriate safeguards and provided that conditions on Local Development Orders are properly enforced. However, we consider that the consultation process leading to adoption of Local Development Orders where Schedule 2 development is included is unclear and recommend further detail is provided about these consultation arrangements and that this should be clearly set out in the regulations. Whilst we note that there will be limitations and conditions attached to Local Development Orders, we are unclear what the procedural arrangements are where changes or extensions are proposed to Schedule 2 development after a Local Development Order to grant planning permission for Schedule 2 development is adopted. We feel that the regulations should make clear what changes, if any, in these circumstances, will be allowed.

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Q9	Do you have any comments on the proposal to prevent modification orders for EIA development being made or confirmed unless the order is accompanied by an Environmental Statement that is taken into account when making or confirming the order?	Yes	No
		☒	☐

Comments:
 Natural Resources Wales welcome this proposal in principle as this proposal reflects the Smout v Welsh Ministers and Wrexham County Borough Council, Case number C1/2011/0188 judgment which makes it clear that modification orders comprise development for the purposes of the EIA Directive, where the making of a Modification Order by the Local Planning Authority could lead to development that may potentially give rise to significant environmental effects.

Q10	Do you have any comments on the proposal to prevent discontinuance orders for EIA development being made or confirmed unless the order is accompanied by an Environmental Statement that is taken into account when making or confirming the order?	Yes	No
		☒	☐

Comments:
 We welcome this proposal because it will prevent discontinuance orders being confirmed or made where they are likely to have significant effects on the environment. We also welcome the provision to prevent the making or confirming of an order unless the order takes account of the environmental statement. However, Natural Resources Wales advise that it should be made clear that in circumstances where further information is required to address omissions in Environmental Statements that discontinuance orders should not be confirmed or made until further information has been provided to the satisfaction of the decision maker.

Q11	Do you have any additional comments on the consultation paper?	Yes	No
		☒	☐

Comments:
 We welcome in principle the main changes to the Environment Impact Assessment Regulations, particularly the increased transparency with regard to reasons for screening decisions.

Natural Resources Wales consider that there should be some updating to the Schedule 2 criteria to include reference to new and novel technology. We have experience of problems trying to determine which part of Schedule 2 certain projects fit into. For example, this issue occurred with an application for a solar farm, where it was not clear which criteria should be used in Schedule 2 of the Environment Impact Assessment Regulations. Natural Resources Wales would be happy to assist with any future review of categories for Schedule 2.

We also reiterate here and recognise that some projects that are subject to Environmental Impact Assessment are sometimes accompanied by overly complex supporting statements. Whilst we support in principle an increase in the screening thresholds, this is subject to our advice that for smaller projects not subject to Environmental Impact Assessment, it will be important to set out clear guidance to Local Planning Authorities that all

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environmental impacts, including cumulative impacts, should continue to be thoroughly assessed and taken into account in decision making. We would also be happy to advise on appropriate wording for any future guidance. Without this, there is a risk that some small, but environmentally harmful projects, would not be properly assessed as a result of a higher screening threshold.

We reiterate here too that whilst we welcome the proposals to screen all Schedule 2 urban development projects located within sensitive areas, we advise that urban development and industrial estate projects outwith of sensitive areas can still lead to likely significant effects on the setting of some sensitive areas such as National Parks and Areas of Outstanding Natural Beauty. We advise that the Environmental Impact Assessment Directive and rulings by the European Court identify that Article 2(1) states “that projects likely, by virtue inter alia of their nature, size or location; to have significant effects on the environment are to be subject to an impact assessment”. Natural Resources Wales, therefore, considers that the potential effects on sensitive areas from a development project should be considered at the screening stage, regardless of whether the proposed project is “...in, or partly in...” the defined sensitive area.

We note the intention to issue a separate consultation on the new EIA Directive 2014/52/EU as adopted by the European Parliament and Council on 16 April 2014 and would welcome an opportunity to meet to discuss the scope and detail of the consultation document in due course.

I do not want my name/or address published with my response (please tick)

How to Respond

Please submit your comments in any of the following ways:

Email
Please complete the consultation response form and send it to: planconsultations-f@wales.gsi.gov.uk
Post
Please complete the consultation form and send it to: Development Management Branch Planning Directorate Welsh Government Cathays Park Cardiff CF10 3NQ
Additional information
If you have any queries on this consultation, please

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Email: planconsultations-f@wales.gsi.gov.uk

Telephone: Alan Groves on 029 2082 5362