

Explanatory Memorandum to the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by Planning Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths AM
Cabinet Secretary for Environment and Rural Affairs

24 April 2017

1. Description

- 1.1 The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016, (“the 2016 EIA Regulations”) transposed into the Welsh land use planning system the requirements of European Directive 2011/92/EU, on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”). The EIA Directive has been amended by European Directive 2014/52/EU (“the 2014 Directive”). The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 restate the 2016 EIA Regulations, with amendments to reflect the changes required by the 2014 Directive and some domestic policy.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 The Regulations are made under section 2(2) of the European Communities Act 1972. There is a choice of procedure in relation to instruments made under section 2(2) of that Act. The Regulations are also made under section 71A of the Town and Country Planning Act 1990 (TCPA) which is subject to the negative procedure.
- 2.2 There was no factor indicating the use of affirmative procedure for these Regulations, considering in particular the amendments contained in these Regulations are driven largely by the requirements of the 2014 Directive.

3. Legislative background

- 3.1 The Welsh Ministers make these Regulations in exercise of the powers provided by section 2(2) of the European Communities Act 1972 and section 71A of the TCPA.
- 3.2 The Welsh Ministers were designated by The European Communities (Designation) (No.3) Order 2007 (S.I. 2007/1679) for the purposes of section 2(2) of the 1972 Act, to make regulations 'in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, insofar as it concerns town and country planning'.
- 3.3 The functions under section 71A of the TCPA were transferred to the National Assembly for Wales by S.I. 1999/672. Those functions were subsequently transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 1998.

4. Purpose & intended effect of the legislation

- 4.1 The EIA Directive requires the authority granting development consent for a particular project to make its decision in full knowledge of any likely significant effects on the environment. Environmental Impact Assessment (EIA) is a process by which information is collected, in a systematic way, to inform an assessment of the likely significant environmental effects arising from a proposed development. EIA aims to prevent, reduce or offset the significant adverse environmental effects of development proposals, and enhance positive ones. It also provides for participation in decision making by the public.
- 4.2 The primary purpose of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 is to transpose the changes made to the EIA Directive in respect of land use planning. The changes will be applied in respect of other consent regimes subject to EIA through separate regulations.
- 4.3 The EIA Directive changes incorporated into the Regulations include the following:
- Insert a definition of EIA;
 - Amend when a member state may exempt a project from the provisions of the Directive
 - Ensure that developers provide certain information where a screening request is made;
 - Provide for a coordinated procedure, where appropriate, for assessments required by the EIA Directive together with the Habitats or Birds Directives¹;
 - Amend the criteria used to screen whether a project is subject to EIA;
 - Provide that environment statements are based on a scoping opinion when one is provided;
 - Increase the public consultation period to 30 days;
 - Provide that notification of the public consultation and documents associated with it are made accessible electronically;
 - Set out information that must be provided in making a decision to grant or refuse consent;
 - Ensure decisions are made objectively and authorities avoid conflict of interest;
 - Change the requirement for competent authorities to provide 'full reasons' to 'main reasons' for screening decisions on planning applications in accordance with the Directive;
 - Ensure that EIA documentation is produced and assessed by competent experts;
 - Reinforce the enforcement system for infringements of the Directive; and,
 - Make transitional provisions for projects where screening or scoping procedures have been initiated, or where the environmental statement has been submitted, under the existing regime before the date that these Regulations come into force.

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds

4.4 The Regulations also make changes that are not directly linked to the transposition of the 2014 Directive. They address existing issues relating to how the 2016 EIA Regulations have operated. These are to:

- Increase the timeframe to provide a scoping request; and,
- Make provision for consents granted under section 141 of the TCPA.

4.5 As the Regulations primarily transpose an EU Directive there is limited opportunity to vary the scope of the legislation. The main risks if the legislation changes are not made are:

- **Infraction costs:** Failure to transpose the Directive in relation to town and country planning in Wales would risk infraction proceedings and any fines would be borne by the Welsh Government.
- **Confusion amongst stakeholders:** Not making the new Regulations would mean stakeholders may be uncertain about the procedures which should apply to the development consents.

5. Consultation

5.1 Details of consultation undertaken are included in the Regulatory Impact Assessment in Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

- 6.1 This Regulatory Impact Assessment considers the impact of transposing the 2014 Directive against the do nothing option. Within the transposition option, there are four significant issues where different approaches could be taken. Analysis has been undertaken for each of these issues.

Transposition of the 2014 Directive

- 6.2 In terms of considering the overall policy objective of transposing the changes to the EIA Directive required by the 2014 Directive, we have considered two options:

Option 1: Do nothing.

- 6.3 The do nothing option would maintain the current regulations for town and country planning without transposing the requirements of the 2014 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. 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 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 2014 Directive is contained in Appendix 1. The amendments include a number of areas that will have no impact on EIA practice within Wales. These include amendments that codify Court of Justice of the European Union case law and amendments that reflect current EIA practice in Wales (amendments made by the 2014 Directive to provide consistency across the EU which will bring practice in other member states into line with the UK). The table provides a summary of all changes that result from the Directive and identifies those which are excluded from the main RIA.
- 7.2 In the analysis below, costs (or a range of costs) are presented at the individual

application level. Aggregate costs will vary depending upon the number and nature of applications submitted in Wales each year. The figures used throughout have been adjusted to take account of inflation.

8. Sectors affected

- 8.1 The sectors most likely to be affected by the proposals include:
- businesses/industry 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.

9. Determining when EIA is required (Screening)

Option 1: Do nothing - current situation

- 9.1 Before a developer submits a planning application they can ask the LPA (or the Welsh Ministers in certain cases) whether the project requires EIA. If the project is listed in Schedule 1 of the EIA Regulations an assessment is required in every case. If the project is listed in Schedule 2, the LPA must consider whether it is likely to have significant effects on the environment and issue a screening opinion.

- 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 consider this information against the factors in Schedule 3 of the Regulations to determine whether the project is likely to have significant environmental effects. The LPA must provide a screening opinion, stating 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 by the Welsh Ministers) has not previously been issued, the authority must screen that development as part of processing the application.

Option 2: Information provided by the developer

- 9.4 When requesting a screening opinion from the LPA, the 2014 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 for other European legislation. 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 currently seeks a screening opinion from an LPA, it is a formal request which must be accompanied by certain information. The statutory information required is minimal and developers will often provide additional information to assist the LPA to screen a project. The actual cost to the developer of producing the information for a screening opinion is considered to be £430² 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 £270 to £539³. For more borderline schemes or contentious cases this could rise to £2,158 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 Projects will not be subject to an EIA where, by nature of their design, they are not likely to 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 and so assist in the screening process.

Option 2 Information provided by the developer

Cost to business/industry

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

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

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

additional cost of providing the information will be £21.50 to £64.50. Taking an average of 1700⁵ screening opinions issued each year by Welsh LPAs the cost increase is between £36,550 and £109,650.

- 9.11 Clarification within the Regulations that EIA is not required where applications avoid significant environmental effects by their inherent design may encourage greater use of in-built mitigation. This may reduce the number of EIAs that are required. It is not possible to forecast the possible reduction in EIAs which will result from this clarification. Where less EIAs are undertaken the cost of producing the corresponding ES's will be saved. The Arup report identified that the costs associated with producing EIA reports can vary significantly from £2,513 to £162,152 (with an average cost of £53,940 (just under the average of the case studies)).

Cost to LPAs/Welsh Ministers

- 9.12 Clearer requirements for the information to accompany screening requests 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 £270 to £539⁶.

Benefits to business/industry

- 9.13 The formal route for requesting a screening opinion remains. The developer is able to choose how much beyond the minimum information they provide. When more than just the very basic information is provided, 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 to avoid significant impacts from the outset.

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 Clarifying 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

Option 1 Do nothing

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

- 10.1 Where a project is subject to EIA, 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, a planning application with accompanying Environmental Statement is publicised. This provides an opportunity for statutory 'Consultation Bodies' and the public 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, 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 2014 Directive retains the provisions that following submission of an environmental statement, there should be consultation with the public and statutory consultation bodies. However it creates an additional requirement for the public to be informed electronically, with the information 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 responsibility for publicity of an EIA application lie with the determining body except where an Environmental Statement is submitted after an application has been made. In the latter circumstance the applicant is required to undertake the local newspaper advertisement. The cost of this is estimated to be £1,260 per advertisement.

Costs to LPAs/Welsh Ministers

- 10.5 The Regulations require an Environmental Statement to be publicised in a local newspaper and by site notice, with a minimum consultation period of 21 days. Where the LPA is required to undertake newspaper advertisement the cost is £1,260 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 or photocopy cost 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, stakeholder engagement should allow the views of the local people to be expressed, which help acceptability and 'buy-in' to a project by the community.

Benefits to LPAs/Welsh Ministers

- 10.8 Effective consultation enhances the quality of applications. If conducted well, stakeholder engagement should improve the trust of stakeholders and enhance

the LPA's reputation, helping to improve future engagement. Community consultation allows the views of the local people to be expressed, which help acceptability and 'buy-in' to a project by the community.

Benefits to the public

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

Option 2 consultation in the decision making process

Costs to business/industry

- 10.10 There are no additional 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 £1,260 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 £1,260 per newspaper advertisement. The current minimum consultation period under the planning system 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 already take these into account if they raise material considerations.
- 10.12 20 of the 25 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 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 costs⁷</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 at the offices of the LPA. Where internet access does not allow a third party to access the documentation, it will still be made publically

⁷ Planning (Wales) Act 2015 EMRIA

available on the planning register. It is not considered possible to quantify the cost in undertaking these actions.

Benefits to business/industry

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

Benefits to LPAs/Welsh Ministers

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

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 Environmental Statement electronically should enhance the opportunities for the public to be involved in the decision making process. Where a lack of 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

Option 1 Do nothing

- 11.1 Projects that fall within the EIA regime may also require assessment under other EU Directives. Projects that may have a significant effect on a European designated site are also subject to an Appropriate Assessment under the Habitats and Birds Directives. This assessment is undertaken by the LPA, however they may ask for information from the developer to assist them.
- 11.2 The number of projects subject to Appropriate Assessments is limited. Where both assessments are required, the developer may ensure all information is available at the same time, however there is no requirement for this to occur.

Option 2 consultation in the decision making process

- 11.3 The 2014 Directive has sought to reduce the complexity of consenting and assessment processes for developers by requiring the coordination of procedures where projects fall to be assessed simultaneously under the EIA, Habitats and Birds Directives (Directives 2011/92/EU, 92/43/EEC and 2009/147/EC respectively).
- 11.4 The regulations make a general provision for coordination in relation to the EIA, Habitats and Birds Directives. They do not specify specific steps to retain flexibility and ensure the duty can be adapted to different project circumstances.

Option 1 Do nothing

Costs to business/industry

11.5 Where co-ordination is undertaken, the European Commission expects a reduction in general environmental assessment costs, including EIA-related costs⁸. This would be achieved by avoiding a duplication of efforts. Co-ordination reduces the delays resulting from the overall development consent (permitting) process⁹.

11.6 Where the assessments are not co-ordinated, these cost savings will not be realised.

Costs to LPAs/Welsh Ministers

11.7 At the moment, where co-ordination is undertaken, a more comprehensive information base for decision-making can be enabled. The European Commission identified, in the long term this will avoid duplication of efforts at the various stages of the EIA process and is therefore expected to reduce administrative burden.

Costs to the public

11.8 Where the assessment is not co-ordinated there are no direct costs to the public as the information is available. There are indirect costs as third parties may struggle to view the documentation (as they may be uncertain what relates to each assessment). Where assessments are co-ordinated the indirect costs are expected to be reduced. It is not considered possible to quantify the cost in undertaking these actions.

Benefits to business/industry

11.9 Businesses have the opportunity to co-ordinate assessments, resulting in benefits leading to a smoother consenting process. However, there is no compulsion on the LPA to facilitate this provision.

Benefits to LPAs/Welsh Ministers

11.10 Where co-ordination is undertaken, the LPA and developer will agree information to be provided, leading to a smoother consenting process. However, there is no compulsion on the developer to facilitate this provision

Benefits to the public

11.11 Where coordination is undertaken this will have benefits on governance and public participation as it will be easier access to documents that show the effect on the environment. This will assist third parties in participating in the decision making process.

Option 2 provide coordinated procedures

Costs and benefits

⁸ Impact Assessment – accompanying the document PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

⁹ Sommer Andreas, Land Salzburg, One Stop Shop – Conclusions from the Austrian experience with Consolidated Procedures and Integrative Assessment, Presentation for the Conference for the 25th Anniversary of the EIA Directive, Leuven, 18-19 November 2010

11.12 Under the existing legislation, co-ordination of assessments is already undertaken, but is not compulsory. This means certain projects do not benefit from the process. As option two will require coordination, all the benefits in option 1, where co-ordination is undertaken will apply to option 2.

12. Monitoring of significant environmental effects

Option 1 Do nothing

12.1 The EIA Directive, prior to the changes by the 2014 Directive, contained no explicit monitoring requirements, however, these were implicit in the requirements of the Directive. Therefore effects, as well as delivery of commitments in the ES, can be monitored. Competent authorities can (and do) secure monitoring through the attachment of monitoring conditions to consents.

Option 2 Monitoring of significant environmental effects

12.2 The Directive requires that the decision to grant development consent should include, where appropriate, monitoring measures. The type of parameters 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 will 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.

- Project 1 - 5 year monitoring programme for a 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.
- Project 2 – long term monitoring programme of new road scheme. The scope of work includes badger, bat and dormice monitoring. Arboricultural and landscape works. Remedial action was also undertaken. The scheme has two phases, post construction years 1 to 5 and, 5 to 10. The costs for the phases are £59,000 and £70,000.

Costs to LPAs/Welsh Ministers

12.4 At the moment. 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 implementation. 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 Monitoring presents an opportunity both to control environmental effects and to learn from the implementation. 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

12.8 Monitoring presents an opportunity both to control environmental effects and to learn from the implementation. 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

12.9 Monitoring measures for EIA projects are already required for projects; however, making explicit reference in the regulations may increase the amount of monitoring that is requested by LPAs. It is anticipated that LPAs will request monitoring on 5 to 15% more projects than under the do nothing option.

Costs to LPAs/Welsh Ministers

12.10 Where an increased amount of monitoring is requested, the LPA will receive an increased amount of monitoring data, which may incur a minor administrative cost to record and process the information. The possessing of additional information is not considered to incur a cost to the LPA beyond their current costs. Currently LPAs will need to manage information submitted by the developer after it has received consent, the monitoring costs are considered to fall within this existing administrative workload.

Costs to the public

12.11 There are no costs to the Public

Benefits to business/industry

12.12 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.

12.13 Monitoring presents an opportunity both to control environmental effects and to learn from the implementation. 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

- 12.14 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 implementation. 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

- 12.15 Monitoring presents an opportunity both to control environmental effects and to learn from the implementation. 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. Make provision to apply EIA procedures to Section 141 of the TCPA (Purchase Notices)

Option one – Do nothing

- 13.1 The lack of specific provision may lead to inconsistent practice. Failure to transpose in a manner tailored to specific circumstances may also lead to infraction proceedings against the Welsh Government.

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

- 13.2 Including procedures to ensure the grant of planning permission by the Welsh Ministers in respect of Purchase Notice procedures set out in section 141 will provide transparency and consistency between the regulations and Directive. This will ensure consistent practice is followed. Explicit transposition of the Directive should reduce the likelihood of infraction proceedings against the Welsh Government.

Option 1 – do nothing

Costs to Welsh Ministers and applicants

- 13.3 Projects granted under section 141 could be subject to the existing EIA process. As there is not explicit drafting, there is the possibility that the Directive may be misapplied.
- 13.4 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 discretion 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

- 13.5 Projects granted under section 141 could be subject to the EIA process. As the consent mechanism is not included in the regulations there is the possibility that the Directive may be misapplied.
- 13.6 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 be liable for costs awarded against them, which can be considerable if cost protection is not obtained.

Effects for the Welsh Ministers/Applicants

- 13.7 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.

Effects for the Parties involved in the process

- 13.8 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

- 13.9 As these projects should already be subject to the existing EIA regime there is no financial cost of adding provisions to the Regulations.
- 13.10 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.

- 13.11 As these consents are already subject to the existing EIA regime, there is no financial cost of adding provision to the Regulations.

Benefits to Welsh Ministers /applicants

- 13.12 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

- 13.13 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.

14. Summary of the preferred option

14.1 Based on the analysis undertaken, it is considered on balance that option two, which replaces the 2016 EIA Regulations to transpose the 2014 Directive, should be introduced. These options are preferred in order to:

- Prevent infraction proceedings

14.2 The do nothing option would maintain the current regulations for town and country planning without transposing the requirements of the 2014 Directive. This would put the Welsh Government at risk of infraction proceedings and possible fines.

- Limited/Small impact on business/industry

14.3 The predicted scale and size of costs associated with making the amendments is limited. This is because the number of EIAs undertaken in Wales is small, and many of the amendments reflect existing practice within the UK. It is not predicted that compliance with the new directive will impact on the number of applications submitted or economic activity in Wales.

- Enhanced public participation

14.4 The amendments will increase the ability of the public to participate and understand decisions in the EIA process. The new regulations increase the public consultation period, provide that notification of the public and documents associated with a project are made accessible electronically; and that certain information on the decision is made publically available.

15. Consultation

15.1 The consultation exercise generated 39 responses from a wide range of respondent categories, including: local planning authorities, businesses (including developers), professional bodies/interest groups and those from the government agencies/public sector. The majority of the respondents support the proposed changes to the Regulations and a summary of their comments and our response is provided in the 'Summary of Responses' document available on the Welsh Government website.

16. Analysis of Other Effects and Impacts

Equality of Opportunity

16.1 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 enhancing equality of opportunity.

Sustainable Development

- 16.2 The EIA Directive seeks to ensure that the environmental impact of development is considered at the earliest possible point of the development process. Where a project is subject to EIA, the process provides for engagement with the public and groups with specific environmental interest.
- 16.3 The Environmental Statement, together with any other information which is relevant to the decision, comments and representations made by the public and the groups must be taken into account in deciding whether or not to give consent for the development. When granting consent that has a significant impact, consideration must also be given to monitoring and whether remedial action is needed as a result of the monitoring. This will help to ensure sustainable development is delivered.

The Welsh Language

- 16.4 The proposed changes to the EIA Regulations will have no impact on the Welsh language and Welsh Communities. 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

- 16.5 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.

Appendix 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>National defence is a non-devolved matter and therefore is not covered in these Regulations.</p> <p>The 2014 directive now provides an exemption from the provisions, where projects or parts of projects whose sole purpose is a response to civil emergencies, 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 of the Regulations, 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

<p>Annex IIA and take into account available results of other relevant assessments carried out under other European legislation</p>	
<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 and include the main reasons for the decision and other specified information.</p>	<p>The LPA already take into account the information provided by the developer in reaching a decision. The existing regulations already provide that positive and negative screening decisions are provided to the public and so this will not have any additional impact.</p>
<p>Art 4(6) - Timeframe for screening opinion</p>	<p>Screening decisions 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.</p>
<p>Art 5(1) - Developer must prepare and submit and EIA report</p>	<p>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 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.</p>
<p>Art 5(2) – Scoping opinions</p>	<p>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</p>

	<p>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 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 not defined in the Directive. The Regulations provide that these are persons who in the opinion of the relevant planning authority or the Welsh Ministers, as appropriate have sufficient expertise to ensure the completeness and quality of the statement. Environmental statements in Wales are prepared by someone who has the ability to ensure the completeness and quality of the statement, 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 predicted that the changes will have any onerous impacts in practice.</p>
Art 6(1) – consultation	<p>Consultation is already required in the regulations and in other subordinate legislation. 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	<p>Within main RIA</p>

to the public	
Art 6 (5) - Arrangements for informing the public	Within main RIA
Art 6(6) - Timeframes for informing the consultation bodies and the public and to participate in the decision making	Within main RIA
6 (7) - Timeframes for consulting public on EIA report	Within main RIA
Art 7(4) – trans boundary effects	The regulations provide for projects that have a trans boundary effect. This includes projects in Wales that effect other nations, and projects in other nations that effect Wales.
Art 8a - Decision to grant consent must incorporate at least the reasoned conclusion, environmental conditions and/or mitigation measures and, where appropriate, monitoring measures	Within main RIA
Art 8a(2) - Stating reasons for refusing development consent	Other legislation 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
8a(5) – member states shall ensure that the Competent Authority takes any decision in a reasonable period of time.	Bodies should already make decisions in a reasonable time frame. In certain circumstances the Regulations set a timeframe, in other situations this is already set out in other legislation. It is not considered to provide any additional burden to any party.
Art 8a(6) - Reasoned conclusion being up to date	This provision, although not explicit in the EIA Directive until now is already effectively required in decision making. In practice the time between the competent authority’s “reasoned conclusion” and

	<p>the actual decision should not be extremely lengthy (may be e.g. LPA resolutions to grant “subject to finalisation of a s.106”). However, if there is a really significant period of after the resolution then it’s right for the LPA to reconsider environmental impacts.</p>
<p>Art 9(1) - Informing the public and consultation bodies</p>	<p>The Regulations make provision for enhanced information to be provided promptly to the public after a decision is made in relation to whether to grant planning permission for EIA development. There is also a duty to inform the Welsh Ministers and consultation bodies of final decisions. The regulations already require that LPA should inform the public and other parties of final decisions. The additional information is not considered to cause additional burden on any party.</p>
<p>Art 9a - Conflicts of interest</p>	<p>LPA’s 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 reinforces existing legislation this should not cause any additional burden on any parties.</p>
<p>Art 10a - Penalties for infringements of national provisions.</p>	<p>Unauthorised development.</p> <p>The exercise of enforcement powers provided in the TCPA is at the discretion of local authorities. However, that discretion cannot over-ride the requirements of the EIA Directive. When considering whether to take enforcement proceedings 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.</p> <p>If the planning authority concludes the development is EIA development, then its exercise of discretion will be influenced by the need to comply with the legal requirements of the Directive. The planning system already operates a system enabling enforcement where unauthorised development has occurred. As this provision reinforces existing systems and should not cause any additional burden on any parties</p>

	<p>Environmental reports (and other information) that are misleading</p> <p>At present, if someone were to intentionally make a false certificate, 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. As the legislation is already in existence, there is no additional burden on any parties.</p>
<p>Article 3 of Directive 2014/52 provides the transitional arrangements of the Directive.</p>	<p>The transitional arrangements of the Directive are designed to ensure that projects subject to the existing regime are not adversely affected by the amendments. As such this provision is not considered to have any additional burden on any party.</p>

Appendix B: The Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	no
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	no
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	no
Q4: Would the costs of the regulation affect some firms substantially more than others?	no
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	no
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	no
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	no
Q8: Is the sector characterised by rapid technological change?	no
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	no