

SL(6)548 – The Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024

Background and Purpose

The Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024 (“these Regulations”) amend the Developments of National Significance (Fees) (Wales) Regulations 2016 (“the Fees Regulations”) to provide that the fee for the Welsh Ministers determining applications for electricity generating projects below 50MW is only payable where the application is determined by the Welsh Ministers as a result of a direction under paragraph 9 of Schedule 4D to the Town and Country Planning Act 1990.

According to the Explanatory Memorandum, the amendment made by these Regulations is consequential on amendments the Welsh Ministers intend to make in future regulations, which will be called the Developments of National Significance (Wales) (Amendment) Regulations 2024 (“the Future Regulations”).

Procedure

Draft affirmative

The Welsh Ministers have laid a draft of these Regulations before the Senedd. The Welsh Ministers cannot make these Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 2(c) of these Regulations inserts a number of defined terms into regulation 12(10) of the Fees Regulations. In particular this provision provides that, for the purposes of regulation 12, “the 2016 Regulations” means the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016.

Existing regulation 2(1) of the Fees Regulations contains definitions that apply to the whole of those Regulations. In particular, regulation 2 provides that “the 2016 Regulations” means the Developments of National Significance (Wales) Regulations 2016.

The amendment made by regulation 2(c) of these Regulations appears to have the desired legal effect, because the specific definition of “the 2016 Regulations” for the purposes of



regulation 12 will override the general definition of “the 2016 Regulations” that would otherwise apply in accordance with regulation 2(1).

However, giving the same term different meanings within the same set of Regulations could cause confusion to the reader (see Writing Laws for Wales at 4.4(6)), particularly when existing regulation 2(1) has not been amended to reflect that the general definition does not apply for the purposes of regulation 12 (see Writing Laws for Wales at 4.5(8)).

The Welsh Government is asked to explain why it chose to use a term already given a different meaning elsewhere in the Fees Regulations, rather than creating a new term, which would have been clearer for the reader.

Merits Scrutiny

The following three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Paragraph 2.1 of the Explanatory Memorandum states that:

The making of the Developments of National Significance (Wales) (Amendment) Regulations 2024 will be subject to the Senedd’s approval of the Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024, and if approved, it is anticipated that both sets of Regulations will be made simultaneously on 11 December.

The Welsh Government is asked why it is necessary for both sets of Regulations to be **made** simultaneously, when any need to coordinate the commencement of provisions could be managed through the coming into force provisions in the respective Regulations.

The Welsh Government is also asked to confirm that it does not intend to delay the signing of these Regulations by the Welsh Ministers if they are approved by the Senedd, in order to align with the making of the Future Regulations.

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Paragraph 2.2 of the Explanatory Memorandum states that:

The amendment made by the Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024 is consequential on the Developments of National Significance (Wales) (Amendment) Regulations 2024. It would not be possible to interpret the regulatory impacts made by each statutory instrument in isolation without explaining the wider legislative context. Hence, a composite Explanatory Memorandum has been prepared to describe these statutory instruments.



The Committee's scrutiny of these Regulations has been made more difficult by the fact that the Welsh Ministers have not laid the Future Regulations at the same time, to enable the Senedd to consider the full details of the policy it is being asked to approve. The limited information provided in the Explanatory Memorandum is no substitute for the text of the Future Regulations themselves.

The Explanatory Memorandum describes these Regulations as being consequential on amendments to be made in the Future Regulations. It therefore appears that the key policy detail is contained in the Future Regulations rather than in these Regulations. In light of this, the Welsh Government is asked:

- a. Why the Future Regulations were not made and laid at the same time as these Regulations were laid in draft before the Senedd, with aligned coming into force provisions?
- b. If there is a reason that these Regulations and the Future Regulations could not have been laid at the same time, the Welsh Government is asked why both sets of Regulations could not have been combined in accordance with section 40 of the Legislation (Wales) Act 2019 ("the 2019 Act")?
- c. If it would not have been possible to use section 40 of the 2019 Act, the Welsh Government is asked to explain why the Future Regulations, which contain the key policy change, were not made and laid first, in order that the Senedd could choose whether to annul those Regulations before considering whether to approve the consequential changes to the fees regime provided for by these Regulations?

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

It is noted that these Regulations were not subject to formal consultation for the reasons set out in paragraph 5.1 of the Explanatory Memorandum. In particular, the Explanatory Memorandum notes that the change made by these Regulations is time limited, as the developments of national significance system will be replaced when the Infrastructure (Wales) Act 2024 comes into force.

Welsh Government response

A Welsh Government response is required to reporting points 1 to 3.

Government Response: The Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024

Technical Scrutiny point 1: The Government accepts giving the same term different meanings within the same set of Regulations has the potential to cause confusion to the reader and that it would have been clearer to have created a new term. As noted in the Committee's draft report, the specific definition in regulation 12 of the Developments of National Significance



(Fees) (Wales) Regulations 2016 will override the general definition in regulation 2 of those Regulations. Therefore, the amendment has the desired legal effect.

Merits Scrutiny point 2: The Government agrees it is possible for both sets of Regulations to come into force on the same day without them being made simultaneously. As set out in the Government response to Merits Scrutiny point 3, the Developments of National Significance (Wales) (Amendment) Regulations 2024 (“the Future Regulations”) have been laid in advance of the Senedd debate on these Regulations and the intention is that they will both come into force on 6 January 2025.

Merits Scrutiny point 3: We acknowledge the Committee’s concern that the scrutiny of these Regulations has been made more difficult because the Future Regulations have not been laid. Therefore, we confirm the Future Regulations have been laid in advance of the Senedd debate on these Regulations, and as a result, the Explanatory Memorandum for these Regulations has been withdrawn and re-laid.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 3 December 2024 and reports to the Senedd in line with the reporting points above.

