

SL(6)625 – The Infrastructure Consent (Pre-Application and Application Procedure and Transitional Provisions) (Wales) Regulations 2025

Background and Purpose

The Infrastructure (Wales) Act 2024 (“the 2024 Act”) creates a unified consenting regime for major infrastructure projects in Wales, both on land and in the territorial sea. These Regulations are part of a suite of regulations that implement and provide details of the processes required under the 2024 Act.

These Regulations make provision for pre-application processes and procedures, and the manner in which applications for infrastructure consent are to be dealt with by the Welsh Ministers in respect of any development which is, or forms part of, a significant infrastructure project.

The Regulations include provision in relation to, among other things, notice, and acceptance of notice, of proposed development, pre-application consultation and publicity, information to be contained in notices, general requirements for applications, validating an application, consulting statutory consultees and other persons, local impact reports, marine impact reports, and the procedure in respect of variation of applications.

The Schedule to the Regulations also sets out the consultees who must be consulted before the grant of infrastructure consent according to the type of development being applied for.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following 22 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(i) – that there appears to be doubt as to whether it is intra vires

The preamble lists one of the enabling powers as section 132(2) of the 2024 Act. However, section 141(3) and (4)(k) of the 2024 Act requires that statutory instruments containing



regulations made under section 132 are subject to the affirmative procedure. This instrument instead follows the negative procedure.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 2(1), in the definition of “EIA development” and “the EIA Regulations” there are references to the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 and the Marine Works (Environmental Impact Assessment) Regulations 2007. However, these SIs have been defined as “the Planning EIA Regulations” and “the Marine EIA Regulations” respectively in these Regulations. Therefore, those defined terms should have been used when referring to those instruments. This has been done when referring to other defined legislation such as the Infrastructure (Wales) Act 2024 which is referred to as “the 2024 Act” in the definition and throughout these Regulations.

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The definition of “environmental statement” in regulation 2(1) includes a reference to “the Marine Regulations”. However, this has not been defined in the regulations and instead appears to be referring to “the Marine EIA Regulations” which has been defined.

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

In regulation 2(1), the definition of “significant infrastructure project” states that it has the meaning in “Part 1” of the 2024 Act. However, it is unclear if this should instead refer to “section 1” as is the case in the same definition in regulation 2 of the Infrastructure Consent (Miscellaneous Provisions) (Wales) Regulations 2025.

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

Regulation 10(a)(i), (iii), (iv), (v) and (vii) require an applicant to give notice to certain categories of persons “considered appropriate by the applicant”. This includes any planning authority, community council, Member of the Senedd, Member of the House of Commons, or any other person considered appropriate by the applicant. Although the applicant “must” give notice to anyone in the list of persons “considered appropriate by the applicant” this gives a wide discretion to the applicant to not consider any of these persons “appropriate” and appears to undermine the requirement to give notice. Whilst we appreciate that 10(a)(vii) provides a catch all category in much the same way as regulation 8(h), for example, the requirements as drafted in 10(a)(i), (ii) (iv) and (v) may result in none of those persons receiving notice at the discretion of the application before an application is submitted.

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



Regulation 10(a) requires a notice to be published “for at least 7 days” in one or more newspapers, at least one appropriate fishing journal, and Lloyd’s list, before the application is submitted. In contrast, regulation 26 approaches the publication of notices where an application is accepted differently. Regulation 26(4) provides that a newspaper notice needs to be for “a minimum period of one week” commencing within 5 working days beginning with the day after the application is accepted as valid. Likewise, there is a requirement to publish in a fishing journal for “a minimum period of one week”. However, there is no timescale listed for the notice to be published in Lloyd’s list, unlike in regulation 10(a). It is unclear therefore, how long a notice would need to be published in Lloyd’s List under regulation 26(4)(b).

7. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 11(f), in the Welsh text, the meaning of the term “issued” has been expressed as “cyhoeddi” but in the opening words of regulation 11 the same term has been expressed as “dyroddi”. Also, “cyhoeddi” has also been used to express the meaning of “published” in regulation 11(e). Therefore, the terminology of the Welsh text is inconsistent when referring to the issuing of notices in regulation 11. “Dyroddi” is the standardised word recommended for “issue” by the Glossary of the Welsh Government’s Legislative Translation Unit.

8. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 14(1), the words “in accordance with section 29(4) of the 2024 Act” are superfluous. The definition of “notice of acceptance” in regulation 2(1) notes that it is a notice given under section 29(4) of the 2024 Act.

9. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 17(2) there is a difference between the English and the Welsh text. In the Welsh text, the chapter details are noted in brackets immediately after the second reference to the Energy Act 2004 at the end of the provision. However, they are not noted in the English text.

10. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 19(a), there is a difference between the English and Welsh text. In the English text, it begins with “securing” but there is no corresponding phrase to convey that meaning in the Welsh text.

11. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 24(f), the words “under regulation 2(1) of the Marine EIA Regulations” are superfluous because the definition of regulated activity in regulation 2(1) of these



Regulations notes that “regulated activity” (“gweithgaredd a reoleiddir”) has the meaning given in regulation 2(1) of the Marine EIA Regulations.

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

Regulation 26(3) which relates to the publication of notices, states that “Where a notice is, without any fault, removed, obscured or defaced before the period of 42 days has elapsed, the requirement will be treated as having been complied with if reasonable steps are taken to protect the notice and, where required, to replace it”. This appears to be inconsistent with the approach in regulation 7(3) which states that “Where the site notice is, without any fault of the applicant, removed, obscured, or defaced before the period of 42 days has elapsed, the applicant will be treated as having complied with the requirements of the relevant paragraph if they have taken reasonable steps to protect the site notice and if need be, replace it”. The drafting in 7(3) seems much clearer as to its intention. The provision in 26(3) appears to only provide protection for the notice in circumstances “without any fault”. In cases where the notice is simply removed, it will be difficult to ascertain whether that was with, or without, fault, and therefore whether the provisions of 26(3) would apply. If a notice was obviously deliberately and maliciously defaced, 7(3) would require reasonable steps be taken for it to be protected/replaced. Conversely, 26(3) would not appear to require protection/replacement if the notice was defaced with “fault” by a person. However, it would if it could be proved that it was defaced without fault. This appears to be an inconsistent approach for provisions which are both designed, on their face, to ensure that site notices can be viewed by persons at the site.

13. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 26(5), there is a difference between the English and Welsh text. In the English text it notes “beginning the day after” but the meaning given by the Welsh text is “beginning with” the day after. In addition, the descriptions of the beginning of periods of time vary in the English text as elsewhere in these Regulations it usually notes “beginning with the day” except in this provision and in the opening words of regulation 32(1) where “beginning the day” has been used. The Welsh text varies because in regulations 4 and 11(f) “sy’n dechrau drannoeth” has been used to convey “beginning with the day” but “sy’n dechrau â thrannoeth” has been used elsewhere such as in regulations 27 and 31.

14. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 27(3), there is an incorrect reference to “paragraph 12 of these Regulations”. However, there is no paragraph (12) in regulation 27, and it appears to be referring instead to regulation 12. In addition, the words “of these Regulations” are also superfluous.

15. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements



In regulation 28(c)(iii), there is a reference to “paragraph (1)(c)(ii) of this regulation”. Regulation 28 does not contain a paragraph (1). If it is referring to regulation 28(c)(ii) it should be described as sub-paragraph (ii).

16. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 29(2)(a), there is a difference between the English and the Welsh text. In the Welsh text, there is a conjunction meaning “and” at the end of regulation 29(2)(a), to show the relationship between sub-paragraphs (a) and (b). However, there is no “and” in the corresponding place in the English text.

17. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In Part 7, there is a difference between the English and the Welsh text. In the English text, in the heading of that Part, it notes “Part 7”, but the meaning given by the Welsh text is “Part 1”.

18. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 32(3)(b), the reference to “regulation 7 of the Infrastructure Consent (Miscellaneous Provisions) (Wales) Regulations 2025” does not appear to be correct. It is unclear if it should refer the reader to regulation 8 or some other provision in these Regulations.

19. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In the Schedule, in paragraph (g), in Column 2, paragraph (iii), there is a difference between the English and Welsh text. In the English text, it notes “the grass surface of a playing pitch **on a playing field** with...” but the meaning given by the Welsh text is “the grass surface of a playing pitch with...”. There is an additional significance to this difference because “playing field” is a term defined for paragraph (g) by the Interpretation of Table.

20. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In the Schedule, in the Interpretation of table, in paragraph (b), there is a difference between the English and Welsh text. In the English text, in the paragraph beginning with “Reference to the height of development” it notes “the highest part of the surface adjacent to it” at the end of the paragraph. However, the meaning given by the Welsh text is “the highest part of the surface **immediately** adjacent to it”. In this regard, the English text is inconsistent because it does use the phrase “immediately adjacent” earlier in the same paragraph.

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



In the Schedule, in the Interpretation of Table, in paragraph (f), the term “airport” is given the same meaning as in section 82(1) of the Airports Act 1986. However, it is also defined with that meaning in section 143(1) of the 2024 Act. It is unclear why “airport” has not been defined by reference to the 2024 Act, unlike definitions such as “harbour authority”.

22. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In the Schedule, in the Interpretation of Table, there is a difference between the English and Welsh text in the numbering of the paragraphs. In the English text, the definition of “Distribution Network Operators” appears in paragraph (g), but in the Welsh text, there is no paragraph (g), so that the definition appears in paragraph (f) immediately after the definition of “airport”.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

A Welsh Government response is required

Legal Advisers

Legislation, Justice and Constitution Committee

2 July 2025



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee