Draft Regulations laid before the National Assembly for Wales under section 333(3E) of the Town and Country Planning Act 1990, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

TOWN AND COUNTRY PLANNING, WALES

The Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend—

–the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 ("the DNS Criteria Regulations"),

–the Developments of National Significance (Fees) (Wales) Regulations 2016 ("the DNS Fees Regulations"), and

–the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 ("the TCP Fees Regulations").

The DNS Criteria Regulations, amongst other things, specify the criteria whereby development in Wales is of national significance for the purposes of section 62D of the Town and Country Planning Act 1990 ("the 1990 Act"). Such development is referred to as development of national significance or "DNS".

Regulation 2 of these Regulations amends the DNS Criteria Regulations to give DNS status to the installation of electric lines above ground which have a nominal voltage of 132 KV or less and which are associated with a devolved Welsh generating station.

Regulation 2 also—

–increases the DNS threshold relating to the construction or extension of generating stations, other than onshore wind generating stations, from 50 MW to 350 MW;

–removes energy storage facilities from the definition of "generating station", with the effect that the development of such facilities is not DNS.

Regulation 3 of these Regulations amends the DNS Fees Regulations so that a fee for the determination of an application for planning permission for the installation of an electric line above ground, is only payable where that determination is made by the Welsh Ministers as opposed to a person appointed for that purpose.

Regulation 4 of these Regulations corrects an anomaly in the TCP Fees Regulations. A fee is made payable to local planning authorities in respect of a deemed application in circumstances where that application would otherwise have been made to the Welsh Ministers by virtue of section 62D of the 1990 Act.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained at www.gov.wales.

Draft Regulations laid before the National Assembly for Wales under section 333(3E) of the Town and Country Planning Act 1990, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

TOWN AND COUNTRY PLANNING, WALES

The Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019

Made	***
Coming into force	***

The Welsh Ministers, in exercise of the powers conferred on them by sections 62D and 303 of the Town and Country Planning Act 1990(**1**), and conferred on the Secretary of State by section 333 of that Act(**2**) and now exercisable by them(**3**), make the following Regulations.

(**1**) 1990 c. 8. Section 62D was inserted by section 19 of the Planning (Wales) Act 2015 (anaw 4) ("the 2015 Act"). Section 303 was substituted by section 199 of the Planning Act 2008 (c. 29) and was amended by sections 27 and 55 of, and paragraphs 4(1) and 5 of Schedule 7 to, the 2015 Act. There are other amendments not relevant to these Regulations.

(**2**) Section 333 was amended by section 118(1) of, and paragraphs 1 and 14 of Schedule 6 to, the Planning and Compulsory Purchase Act 2004 (c. 5) and by section 55 of, and paragraph 3 of Schedule 7 to, the 2015 Act. There are other amendments to section 333 not relevant to these Regulations.

(**3**) The functions of the Secretary of State were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), *see* the entry in Schedule 1 for the Town and Country Planning Act 1990. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

In accordance with section 333(3E) of that Act(**1**), a draft of this instrument was laid before and approved by resolution of the National Assembly for Wales.

Title and commencement

1. The title of these Regulations is the Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019 and they come into force on 1 April 2019.

Amendments to the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016

2.—(1) The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) Regulations 2016(**2**) are amended as follows.

(2) After regulation 3(1)(aa) (developments of national significance: general) insert—

"(ab) the installation of an electric line above ground;".

(3) In regulation 4 (generating stations)—

(a) in paragraphs (1) and (2) for "50 megawatts" substitute "350 megawatts";

(b) in paragraph (3)—

(i) in the definition of "generating station" ("*gorsaf gynhyrchu*") after "but does not include an onshore wind generating station" insert "nor a facility that generates electricity from stored energy";

(ii) at the appropriate places insert—

""a pumped hydroelectric storage facility" ("*cyfleuster storio hydrodrydan â phwmp*") is a facility that stores the gravitational potential energy of water that has been pumped to a higher level so that its return to the lower level can be used to generate electricity; ";

""stored energy" ("*ynni wedi ei storio*") means energy that—

(a) was converted from electricity, and

(b) is stored for the purpose of its future reconversion into electricity,

(**1**) Section 333(3E) was inserted by section 55 of, and paragraph 3 of Schedule 7 to, the 2015 Act.

(**2**) S.I. 2016/53 (W. 23), amended by S.I. 2016/358 (W. 111).

but does not include energy stored in a pumped hydroelectric storage facility;".

(4) After regulation 4A (onshore wind generating stations) insert—

"Electric Lines

4B.—(1) The installation of an electric line above ground is within regulation 3(1)(ab) only if the line in question—

(a) has a nominal voltage of 132 kilovolts or less; and

(b) is associated with the construction or extension of a devolved Welsh generating station granted planning permission or consented to on or after 1 April 2019.

(2) In this regulation—

"devolved Welsh generating station" ("*gorsaf gynhyrchu ddatganoledig yng Nghymru*") means a generating station that—

(a) is in Wales and—

(i) generates electricity from wind, or

(ii) has a maximum capacity of 350 megawatts or less; or

(b) is in Welsh waters and has a maximum capacity of 350 megawatts or less;

"electric line" ("*llinell drydan*") means any line which is used for carrying electricity for any purpose and includes, unless the context otherwise requires—

(a) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;

(b) any apparatus connected to any such line for the purpose of carrying electricity; and

(c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line";

"Welsh waters" ("*dyfroedd Cymru*") means so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Wales, and the Welsh zone; and

"Welsh zone" ("*parth Cymru*") has the meaning given in section 158 of the Government of Wales Act 2006(**1**)."

Amendments to the Developments of National Significance (Fees) (Wales) Regulations 2016

3.—(1) The Developments of National Significance (Fees) (Wales) Regulations 2016(**2**) are amended as follows.

(2) In regulation 6(2)(e) after "the fee" insert "(if any)".

(3) In regulation 12 at the beginning of paragraph (1) insert "Subject to paragraph (1A)," and after that paragraph insert—

"(1A) This regulation applies to an application for development within regulation 3(1)(ab) of the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 only during any period within which the function of determining the application is to be exercised by the Welsh Ministers by virtue of a direction given by them under paragraph 9 of Schedule 4D to the 1990 Act(**3**)."

Amendments to the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015

4.—(1) Regulation 10 of the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015(**4**) is amended as follows.

(2) For paragraphs (3) and (4) substitute—

"(3) A fee is only payable under this regulation in respect of a deemed application if on the relevant date in respect of the matters stated in the enforcement notice as constituting a breach of planning control—

(a) a fee would have been payable under these Regulations for an application for planning permission made to the relevant authority; or

(b) a fee would have been payable under the Developments of National Significance (Fees) (Wales)

(**1**) 2006 c. 32. The definition of "Welsh zone" was inserted by section 43 of the Marine and Coastal Access Act 2009 (c . 23).

(**2**) S.I. 2016/57 (W. 27).

(**3**) Schedule 4D was inserted by section 26(1) of, and paragraph 1 of Schedule 3 to, the 2015 Act.

(**4**) S.I. 2015/1522 (W. 179). Regulation 10 was amended by S.I. 2017/528 (W. 111).

Regulations 2016 for an application for planning permission made to the Welsh Ministers.

(4) The amount of the fee is—

(a) where an application would have been made to the relevant authority, twice the amount of the fee which would have been payable in respect of the application; or

(b) where an application would have been made to the Welsh Ministers, twice the amount of the fee which would have been payable to the relevant authority in respect of the application had the application been made to the authority and had the development fallen within paragraph 9(b) of Part 2 of Schedule 1.
”

(3) In paragraph (9) at the end of sub-paragraph (a) omit “or” and after sub-paragraph (b) insert—

“or

(c) before the date when the relevant enforcement notice was issued, made an application to the Welsh Ministers under section 62D of the 1990 Act for planning permission for the development to which the notice relates and had paid to the Welsh Ministers the fee payable upon making that application,”.

Julie James
Minister for Housing and Local Government, one of the Welsh Ministers