

Consultation reference: WG29324

## Consultation Response Form

# Proposed changes to how Environmental Impact Assessment applies to Town and Country Planning

We would like your views on our proposals to make changes to the Environmental Impact Assessment.

***Please submit your comments by 11/11/2016.***

If you have any queries on this consultation, please email: [planconsultations-e@wales.gsi.gov.uk](mailto:planconsultations-e@wales.gsi.gov.uk) or telephone Owen Struthers on 029 2082 6430.

### 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 If someone has asked for their name and address not to be published, that is an important fact we would take into account.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be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published.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.

Consultation reference: WG29324

| Proposed changes to the Environmental Impact Assessment      |   |                                     |
|--|---|-------------------------------------|
| <b>Name</b>  | Adrian James  |                                     |
| <b>Organisation</b>  | Natural Resources Wales   |                                     |
| <b>Address</b>   | Cambria House<br>29 Newport Road<br>Cardiff<br>CF24 0TP   |                                     |
| <b>E-mail address</b>  | adrian.james@cyfoethnaturiolcymru.gov.uk  |                                     |
| <b>Type</b><br><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 with our proposals for third party screening? If not, what proposals would you recommend to ensure third party screening requests are made early in the application process. | Yes                      | Yes (subject to further comment) | No                       |
|----|---|--------------------------|----------------------------------|--------------------------|
|    |   | <input type="checkbox"/> | <input type="checkbox"/>         | <input type="checkbox"/> |

**Comments:**

Introducing an appropriate time limit for requesting screening directions from Welsh Ministres is a reasonable measure to help address the risk of frustrating or delaying planning decisions made late in the determination period. However, it is unclear what time period is proposed in the consultation document. paragraph 2.5 indicates a period of 35 days after the LPA places its screening opinion on the planning register, whilst paragraph 2.6 suggests that the public may have only 21 days to view the opinion after it is placed on the register.

Consultation reference: WG29324

| Q2  | Do you think the time period associated with scoping should be revised? If yes, what timeframe do you consider appropriate and why? | Yes                                 | Yes (subject to further comment) | No                       |
|---|---|-------------------------------------|----------------------------------|--------------------------|
|   |   | <input checked="" type="checkbox"/> | <input type="checkbox"/>         | <input type="checkbox"/> |
| <p><b>Comments:</b></p> <p>The changes introduced under the 2014 Directive which requires the EIA Report (Environmental Statement) to be based on any scoping opinion provided should help ensure certainty for all parties on the content of EIA Reports. We support proposals intended to support the production of proportionate scoping opinions, as this should help encourage developers seek such opinions.</p> <p>We welcome proposals to extend the time period for the preparation of proportionate scoping opinions, as this should allow more time for planning authorities and statutory consultees to consider the impacts that should be considered as part of an EIA. Whilst we would not indicate what would be a proportionate timeframe, we consider that any timeframe introduced should ensure provision for adequate consultation period for statutory consultees.</p> <p>To further help support the delivery of scoping opinions, it may be useful to develop a scoping tool/ checklist as a guide to help staff scope in a systematic manner the impacts which should be considered as part of an EIA.</p> <p>It may also be helpful to consider whether a letter template could also be developed which can be used by statutory consultees and planning authorities when providing scoping advice/ opinions. This may help ensure that advice/ opinions are structured in a clear manner in identifying impacts, the pathways for those impacts, and recommended/ preferred methods to assess impacts, and in so doing to support timely decision-making.</p> <p>We would welcome the opportunity to work with LPAs and the Welsh Government in developing such a tool/ template if considered useful.</p> |   |                                     |                                  |                          |

| Q3  | Do you agree with proposals to provide for a coordinated rather than joint procedure? | Yes                                 | Yes (subject to further comment) | No                       |
|---|---|-------------------------------------|----------------------------------|--------------------------|
|   |   | <input checked="" type="checkbox"/> | <input type="checkbox"/>         | <input type="checkbox"/> |
| <p><b>Comments:</b></p> <p>Yes, we support proposals to provide for a coordinated approach. This should ensure that it is easier for applicants to demonstrate how the requirements of both the EIA Directive, and the Habitats and Birds Directive have been met.</p> <p>However, we recommend that the Welsh Government should consider clarifying why they do not intend to create coordinating procedures for the wider set of Directives (para. 4.4 of consultation document).</p> |   |                                     |                                  |                          |

Consultation reference: WG29324

|  |  |
|--|--|
| <b>Q4</b>  | <b>What coordinating measures would be most useful, and what benefits would they generate?</b> |
| <p><b>Comments:</b></p> <p>We consider that within the current operation of the town and country planning system, there already exists some degree of informal coordination of EIA and HRA processes.</p> <p>We do not have proposed measures to further coordinate assessment processes. However, to ensure a consistent approach we do recommend that consideration is given to clarify, via guidance, how a lead authority should be determined for schemes involving multiple consents. Any such guidance should be developed in consultation with neighbouring administrative authorities to ensure a consistent practical approach.</p> <p>We would welcome the opportunity to work with you to on any specific measures you are considering for introduction.</p> |  |

|  |   |                          |   |                          |
|--|---|--------------------------|---|--------------------------|
| <b>Q5</b>  | <b>Do you agree with our proposals for making information available electronically?</b> | Yes                      | Yes<br>(subject to<br>further<br>comment) | No                       |
|  |   | <input type="checkbox"/> | <input checked="" type="checkbox"/>       | <input type="checkbox"/> |
| <p><b>Comments:</b></p> <p>We support the principle of proposals for making information available electronically. However, the Welsh Government will need to understand and ensure that competent authorities have the ICT capacity to undertake any such requirement.</p> |   |                          |   |                          |

|  |   |                          |   |                          |
|--|---|--------------------------|---|--------------------------|
| <b>Q6</b>  | <b>Do you agree our approach provides the most flexible approach to the 2014 EIA Directives requirements?</b> | Yes                      | Yes<br>(subject to<br>further<br>comment) | No                       |
|  |   | <input type="checkbox"/> | <input type="checkbox"/>                  | <input type="checkbox"/> |
| <p><b>Comments:</b></p> <p>We consider it appropriate for the determining authority to decide what factors should be monitored as part of any grant of planning permission. We consider that the existing system of planning conditions and obligations provides the mechanism to deliver this requirement.</p> <p>It may also be useful in supporting guidance to clarify where statutory consultees should be consulted on considered monitoring proposals. When consulting such bodies, there should be adequate timescales to enable meaningful consultation prior to determination.</p> |   |                          |   |                          |

Consultation reference: WG29324

|           |   |                                     |                                     |                          |
|-----------|---|-------------------------------------|-------------------------------------|--------------------------|
| <b>Q7</b> | Do you agree with our proposals for conflict of interest and functional separation? | Yes                                 | Yes<br>(subject to further comment) | No                       |
|           |   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |

**Comments:**

Given the different bodies involved in EIA, and that functional separation may be achieved through a number of different means, we support the Welsh Government proposal to not define in the EIA Regulations how a body should undertake this provision and instead include the provision set out in paragraph 7.7 of the consultation document.

|           |  |                          |                                     |                          |
|-----------|--|--------------------------|-------------------------------------|--------------------------|
| <b>Q8</b> | Do you agree that the provisions for false or misleading information within the EIA process? | Yes                      | Yes<br>(subject to further comment) | No                       |
|           |  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |

**Comments:**

We have no comment on this matter.

|           |  |     |                                     |    |
|-----------|--|-----|-------------------------------------|----|
| <b>Q9</b> | Do you agree that our proposed approach to enforcement will ensure the effective compliance with the requirements of the EIA Regulations in a proportionate way and in a | Yes | Yes<br>(subject to further comment) | No |
|           |  |     |                                     |    |

Consultation reference: WG29324

|   |  |                          |                          |                          |
|---|--|--------------------------|--------------------------|--------------------------|
|   | way which dissuades bodies which are part of the process from failing to comply? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p><b>Comments:</b></p> <p>We have no comment on this matter.</p> |  |                          |                          |                          |

|   |   |                          |                                     |                          |
|---|---|--------------------------|-------------------------------------|--------------------------|
| <b>Q10</b>  | Do you agree our competent expert proposals provide the most flexible approach to the Directive's requirements? | Yes                      | Yes (subject to further comment)    | No                       |
|   |   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p><b>Comments:</b></p> <p>We support the principle to include a requirement in the Regulations, that the competent authority ensures that it has access to sufficient expertise to examine the EIA Report/ Environmental Statement. We note in paragraph 9.4 that "most decision makers have sufficient expertise within their planning and wider teams to examine the ES" and that "they will also have the comments of the statutory consultation bodies, including Natural Resources Wales".</p> <p>However, we are aware that the nature of expertise within determining bodies (such as LPAs, Welsh Ministers, PINS) may vary, and the understanding among determining bodies of the nature of expertise is available within statutory consultees may vary. It may therefore be useful the Welsh Government to explore with LPAs and statutory consultees the benefits of having a framework in place which gives greater certainty to all parties as to the nature of expertise held within the various bodies, and the nature of advice that may be sought from statutory consultees. This may give greater confidence to competent authorities that they have access to sufficient expertise to examine the EIA Report/ Environmental Statement. We would welcome the opportunity to work with the Welsh Government, LPAs and other statutory consultees in developing such a framework.</p> |   |                          |                                     |                          |

|  |   |                          |                                  |                          |
|--|---|--------------------------|----------------------------------|--------------------------|
| <b>Q11</b>   | Do you have any comments on the application of procedures to secure that Welsh Ministers have access to an ES which is consulted upon and considered before granting consent under Section 141 for EIA development? | Yes                      | Yes (subject to further comment) | No                       |
|  |   | <input type="checkbox"/> | <input type="checkbox"/>         | <input type="checkbox"/> |
| <p><b>Comments:</b></p> <p>We have no comments to make on this matter.</p> |   |                          |                                  |                          |

|            |  |                                     |                          |
|------------|--|-------------------------------------|--------------------------|
| <b>Q12</b> | Do you have any related comments on issues which we have not specifically addressed? | Yes                                 | No                       |
|            |  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Consultation reference: WG29324

**Comments:**

We have indicated in our above comments the potential benefits and areas for additional supporting guidance. We would welcome the opportunity to work with the Welsh Government and other stakeholders to progress these areas of work. We would also welcome the opportunity to participate in any future forums established to ensure the effective delivery of EIA processes for town and country planning, and their relationship with EIA processes for other regimes to ensure best practice and consistency of approach..

| Q13  | Do you have any comments to make about the draft partial Regulatory Impact Assessment? | Yes                      | No                       |
|--|--|--------------------------|--------------------------|
|  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>Comments:</b><br><br>We do not currently hold financial calculations to inform the Regulatory Impact Assessment, but would welcome the opportunity to highlight, during the operational period, any new cost implications for NRW as a result of any new requirements introduced under the the EIA Regulations. |  |                          |                          |

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

Consultation reference: WG29324

## **How to Respond**

**Please submit your comments in any of the following ways:**

|   |
|---|
| <b>Email</b>  |
| Please complete the consultation response form and send it to:<br><a href="mailto:planconsultations-e@wales.gsi.gov.uk">planconsultations-e@wales.gsi.gov.uk</a>  |
| <b>Post</b>   |
| Please complete the consultation form and send it to:<br><b>Development Management Branch<br/>Planning Directorate<br/>Welsh Government<br/>Cathays Park<br/>Cardiff<br/>CF10 3NQ</b>                       |
| <b>Additional information</b>   |
| If you have any queries on this consultation, please<br>Email: <a href="mailto:planconsultations-e@wales.gsi.gov.uk">planconsultations-e@wales.gsi.gov.uk</a><br>Telephone: Owen Struthers on 029 2082 6430 |