

**Explanatory Memorandum to The Town and Country Planning
(Environmental Impact Assessment) (Wales) (Amendment) Regulations
2016.**

This Explanatory Memorandum has been prepared by the 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) (Amendment) Regulations 2016.

Lesley Griffiths
Cabinet Secretary for Environment and Rural Affairs
7 October 2016

1. Description

1.1 These Regulations make a consequential amendment to Regulation 57 of the The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016.

1.2 Regulation 57(2) of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 (“the 2016 Regulations”) increases the period of eight weeks in article 22(2)(a) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO) to sixteen weeks where an application relates to development which requires an environmental impact assessment (“EIA”).

1.3 Regulation **Error! Reference source not found.** of these Regulations substitutes regulation 57(2) of the 2016 Regulations. The period prescribed in article 22(2) after which an applicant can appeal if an application which requires an EIA is amended but not determined, becomes four weeks from the date the amendment is received by the authority or twenty weeks from the date the original application which requires an EIA was received, whichever is the longer.

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. Section 71A of the Town and Country Planning Act 1990 confers power to make regulations for environmental impact assessment beyond the requirements of the Directive 2011/92/EU of 13 December 2011.

2.2 Regulations made under section 71A of the Town and Country Planning Act 1990 are subject to the negative procedure. There is no factor indicating that the use of the affirmative procedure should be followed for these Regulations, and the Town and Country Planning (Environmental Assessment) (Wales) Regulations 2016, (which these regulations amend) were made subject to the negative procedure. For these reasons the negative procedure is appropriate in this case.

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 by section 333 of, and paragraph 1 of Schedule 6 to, the Town and Country Planning Act 1990. The functions under section 71A of the Town and Country Planning Act 1990 cited above 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.

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, in so far as it concerns town and country planning'*.

3.3 The functions under section 71A of the 1990 Act 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 purpose of this legislation is to substitute Regulation 57(2) of the Town and Country Planning (Environmental Assessment) (Wales) Regulations 2016 to prescribe that the period prescribed in Article 22(2) of the DMPWO 2012 after which an applicant can appeal if an application which requires EIA is amended but not determined becomes four weeks from the date that the amendment is received by the authority, or twenty weeks from the date the original application which requires an EIA is received, whichever is the longer.

4.2 This amendment ensures that where a post submission amendment is made to a planning application subject to EIA it is treated in the same manner as when an amendment is made to a planning application that does not require EIA.

5. Consultation

5.1 The provision for adding an additional four weeks to the time-periods set out in Article 22(2) was consulted upon in our consultation titled "[Secondary legislation for development management](#)", which ran from 18 Jun 2015 to 10 Sep 2015. Paragraph 7.3 specifically referred to the time periods for determination set out in the EIA Regulations.

5.2 The consultation responses indicated general support for the proposed new extended 4 week time limit. No impact, or minimal impact, on the public, private, or voluntary sectors is foreseen from making this amendment to regulation 57. As a result, it was not considered necessary to carry out a regulatory impact assessment.