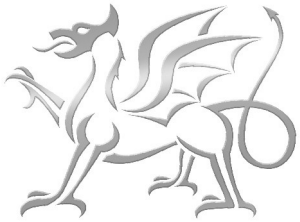

Llywodraeth Cynulliad Cymru
Welsh Assembly Government

GUIDANCE ON REGULATIONS APPLYING ENVIRONMENTAL IMPACT ASSESSMENT TO STALLED REVIEWS OF CONDITIONS ATTACHED TO OLD MINERAL PLANNING PERMISSIONS IN WALES

Planning Division

Department for Environment, Sustainability and Housing

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CONTENTS

Environmental Impact Assessment and Undetermined Reviews of Old Mineral Planning Permissions

Guidance on regulations applying environmental impact assessment to stalled reviews of conditions attached to old mineral planning permissions in Wales

INTRODUCTION

1. This Guidance is issued under regulation 4 of the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009 ("the Regulations"). The Guidance explains the scope and intended effect of the 2009 Regulations and mineral planning authorities (mpas) are required by regulation 4(2) to have regard to this Guidance when exercising functions under the Regulations.

2. Environmental Impact Assessment is a procedure which draws together, in a systematic way, an assessment of a project's likely significant environmental effects. A project in the context of the Regulations is development which has yet to be carried out and which is authorised by a planning permission which is the subject of a stalled review; that is, an application to review the conditions to which the planning permission is to be subject under-

   (a) paragraph 2(2) of Schedule 2 to the Planning and Compensation Act 1991 (registration of old mining permissions) (the 1991 Act);

   (b) paragraph 9(1) of Schedule 13 to the Environment Act 1995 (review of old mineral planning permissions) (the 1995 Act); or

   (c) paragraph 6(1) of Schedule 14 to the 1995 Act (periodic review of old mineral planning permissions

   which was made before 15 November 2000 and which falls to be determined on or after the date on which the Regulations come into force.

3. The principal Regulations which apply EIA to development proposals under the Town and Country Planning Act 1990 ("the 1990 Act") are the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999[1]. They apply in England and Wales. Regulations brought into force in 2000[2] for England and Wales modify and amend the 1999 Regulations and apply EIA to mineral conditions reviews. These are reviews carried out under provisions in the 1991 and 1995 Acts.

4. This Guidance relates to the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Minerals Permissions) (Wales) Regulations 2009. It applies in Wales and is intended primarily for mineral

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[1] SI 1999/293. Planning applications received before 14 March 1999 were subject to the requirements of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI 1988/1199, as amended by SI 1990/367, SI 1992/1494 and SI 1994/677)

[2] The Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2000 (SI 2000/2867) http://www.legislation.hmso.gov.uk/si/si20002867.htm

planning authorities, mineral owners and operators and their agents. Separate Regulations and guidance have been issued by the Department for Communities and Local Government in England.

5. This guidance is not an authoritative statement of the law, which is ultimately a matter for the courts.

6. Copies of this guidance have been sent to all mpas and minerals industry trade associations in Wales. A copy has been placed on the Welsh Assembly Government website at: http://wales.gov.uk/topics/planning/policy/minerals/?lang=en

7. Any questions about the guidance should be sent to Planning Policy Branch Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ; E-mail to: planning.division@wales.gsi.gov.uk.

Section 1
Environmental impact assessment in summary

The Environmental Impact Assessment Directive

8. The Environmental Impact Assessment Directive requires that, before granting 'development consent' for projects, including development proposals, authorities must carry out a procedure known as environmental impact assessment (EIA) of any project which is likely to have significant effects on the environment. The aim of the Directive is to ensure that the authority giving consent for a project makes its decision in the knowledge of any likely significant effects on the environment. The first EIA Directive (85/337/EEC) came into force in 1988. An amending Directive (97/11/EC) came into force on 14 March 1999. This extended the range of development to which the Directive applies and made some small changes to EIA procedures. The Directive was further amended by Article 3 of Directive 2003/35/EC which strengthened the requirements within the EIA procedures for public consultation and participation. References in the rest of this guidance to the EIA Directive mean the Directive, as amended.

The Environmental Impact Assessment Regulations

9. The EIA Directive has been implemented by regulations for development proposals under the 1990 Act. Since 14 March 1999, EIA has been applied to relevant proposals for new development, including relevant proposals for new mineral development and extensions to existing mineral sites, by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

10. The 1999 Regulations were amended in 2000 to apply EIA to mineral conditions reviews where the remaining development permitted by the mineral planning permission is above the threshold set out in Schedule 1 to the 1999 Regulations, or is considered by the mineral planning authority (mpa) as likely to have significant environmental effects.

11. The 1999 Regulations were amended in relation to Wales by the Town and Country Planning (Environmental Impact Assessment) (Amendment) (Wales) Regulations 2006[3] to apply additional consultation requirements to the EIA procedure in accordance with the 2003 amendment to the Directive.

12. In this guidance the 1999 Regulations, as amended in 2000 and 2006, are referred to as "the 1999 Regulations".

13. The 1999 Regulations were further amended in 2008 to require EIA to be applied, if appropriate:

    (a) at reserved matters stage for development granted outline planning permission;

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[3] S.I. 2006/3099.
Council Directive 85/337/EECon the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC and Article 3 of Council Directive 2003/35/EC. Consolidated version at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1985L0337:20030625:EN:PDF

(b) to conditions attached to full planning permissions for all types of development, including minerals development, which require the submission of certain detailed matters and their approval by the planning authority before the development may proceed

14. The 1999 Regulations will be further amended in due course:–

(a) to require EIA to be applied, if appropriate, to conditions determined following the review of minerals planning permissions, which may similarly require the submission of certain detailed matters and their approval by the MPA before all or part of the development may proceed;

(b) to apply the sanction of suspension of minerals development where screening information is not provided by an applicant;

(c) to impose a duty on mpas to consider whether to make a prohibition order under Schedule 9 to the 1990 Act where minerals development remains suspended for two years and any action required under the 1999 Regulations remains to be undertaken; and to modify Schedule 9 to the 1990 for that purpose.

15. Detailed advice on the application of the EIA Directive, through the 1999 Regulations, to all types of development proposals can currently be found in circular 11/99[4]. The remainder of this section of the guidance is a brief summary of EIA procedure as it applies to development proposals which are not stalled reviews. It is intended as background to, and to set the context for, the detailed guidance which follows in the remainder of this guidance on the 2009 Regulations, which apply the EIA procedure to the stalled mineral conditions reviews in a manner which is different in some respects, to that summarised in this section.

16. An assessment of the likely effects of a development proposal on the environment (EIA) may be made by a planning authority when planning permission is sought or mineral permissions are reviewed, or by the Welsh Ministers when development proposals or mineral conditions are determined by mpas, or are the subject of appeal or are called in for the Welsh Ministers' own determination.

17. EIA is **always** required for development proposals of the type and size listed in Schedule 1 to the 1999 Regulations. For example, EIA is always required for quarries and open-cast mining where the surface of the site exceeds 25 hectares or peat extractions where the surface of the site exceeds 150 hectares.

18. EIA **may be** required for development proposals of the type listed in Schedule 2 to the EIA Regulations if they are likely to have significant effects on the environment. The determination by the planning authority and the Welsh Ministers of whether EIA is required is known, respectively, as a **screening opinion** and **screening direction**.

19. Planning permission may not be granted (or new mineral conditions determined) for a proposal for EIA development unless all of the information about the likely environmental effects of the proposal have been taken into consideration by the local planning authority (or the Welsh Ministers in relation to appeals or called-in applications). If EIA is required, the developer must prepare an **Environmental Statement (ES)** containing detailed information about the likely main environmental effects of the proposal. Prior to making a planning application (or application for determination of new mineral conditions), developers can ask the planning authority for a **scoping opinion** as to what should be included in the ES.

[4] http://wales.gov.uk/topics/planning/policy/circulars/1199?lang=en.

The Welsh Ministers may, at the request of an applicant, give a **scoping direction** if the planning authority fails to give its scoping opinion within 5 weeks of the request or any longer period agreed in writing.

20. Developers can ask planning authorities, bodies which planning authorities are required to consult on the development proposal (under Article 10 of the Town and Country Planning (General Development Procedure) Order 1995) and organisations with environmental responsibilities including the Countryside Council for Wales and the Environment Agency (collectively such organisations are defined in the 1999 Regulations as **consultation bodies**) to provide information needed to prepare the ES. ESs must contain the information specified in Part II, and such of the relevant information in Part I, of Schedule 4 to the 1999 Regulations as is reasonably required to assess the environmental effects of the proposal and which the developer can reasonably be required to compile. Every ES should provide a full factual description of the development and an assessment of its likely significant environmental effects. Proposals will not always impact significantly on the environment. Those that do, may not impact significantly on every aspect of the environment. Some impacts may be of little or no significance and should therefore need only very brief treatment to indicate that their possible relevance has been considered.

21. Following submission of an ES, the planning authority and, where appropriate, the Welsh Ministers can request **further information** if they feel that the ES does not cover all the potential significant environmental impacts of the proposal. There are no statutory time limits for the submission of an ES or any further information which may be requested. Until it is submitted, an application for planning permission cannot be determined except by refusal. There are different sanctions to encourage the prompt submission of ESs to support and inform mineral conditions reviews.

22. The ES, any further information (either required by the authority or provided voluntarily by the applicant) and either the application for planning permission, or the application for new mineral conditions, must be publicised and the public and consultation bodies be given an opportunity to comment on them. The ES, any further information and any comments and representations on them must be taken into account by the authority in deciding whether or not to grant **'development consent' –** that is, either planning permission or new conditions to be attached to mineral planning permission(s). Finally, the public must be informed by the planning authority (by placing copies of documents on the planning register and by publishing a notice in a newspaper circulating in the locality) of the decision (including any conditions imposed), the main reasons and considerations for the decision (including information about the participation of the public), and rights and procedures for challenging it.

23. The procedure summarised above applies to applications for planning permission and applications for minerals conditions reviews which were made after 15 November 2000. The procedure for the stalled reviews differs from this, and is set out in detail in the remainder of this guidance.

Section 2
Stalled reviews – background

Legislation to review old mineral permissions

24. The Planning and Compensation Act 1991 and the Environment Act 1995 introduced statutory requirements for the registration and review of old mineral planning permissions and for the determination of new conditions to be attached to them.

25. Section 22 of, and Schedule 2 to, the Planning and Compensation Act 1991 ("the "1991 Act") introduced provisions for the registration and subsequent application by persons with an interest in land or minerals for determination of new conditions to be attached to mineral planning permissions originally granted under Interim Development Orders ("IDOs"). These were permissions granted after 21 July 1943 and before 1 July 1948, many of which were subject to few, if any, conditions to mitigate the impact of operations or to govern the restoration and after use of the site once operations ceased. The aim of these provisions was to ensure that in a relatively short period of time, all valid IDO permission would be subject to operating conditions that accord with up to date environmental standards and that the land covered by the permissions would be promptly restored to an appropriate after use once operations ceased.

26. The process of modernising old mineral permissions was continued by section 96 of, and Schedules 13 and 14 to, the Environment Act 1995 ("the 1995 Act"). Schedule 13 contains a registration and initial review procedure very similar to that in the 1991 Act. It applies to mineral planning permissions granted between 1 July 1948 and 21 February 1982. Schedule 14 contains provisions for the subsequent periodic review of all permissions for minerals development; that is, IDOs, those permissions subject to initial review under Schedule 13 and all other permissions issued after 21 February 1982. These periodic reviews are to be held at 15 year intervals from the date of either a previous review, or, if no review has taken place, from the date of the latest mineral permission relating to the site. There is provision for interested persons to request postponement of a periodic review and a power for the Welsh Ministers to specify, by order, a different first review date.

27. Both the 1991 and 1995 Act powers provide for those with a relevant interest in the land or minerals to which a permission relates, to submit applications to mineral planning authorities (mpas) to determine the conditions to which the permission in question is to be subject. The application must set out proposed conditions. Any new conditions only apply from the date the application is finally determined; that is, the date on which any proceedings on the application have been determined and any time for appealing has expired. Until new conditions are finally determined, operators at active (working) sites can continue to work under existing conditions that apply to the permission.

Application of environmental impact assessment to mineral conditions reviews: 2000 Regulations

28. When the minerals review legislation was introduced in the 1990s, the view was taken that because the reviews did not grant permission for mineral extraction, but merely introduced up-to-date operating conditions, there was no need to apply the provisions of the EIA Directive before new operating conditions were determined either by mpas or by the Welsh Ministers on appeal. Because the consent which

allows a quarry to operate is the mineral permission to which it is subject, the imposition of new operating conditions was not considered at that time to be a "development consent" within the meaning of the Directive.

29. However, High Court judgements in 1999[5] held that the imposition of conditions by mpas in accordance with the provisions of Schedule 2 to the 1991 Act and Schedule 13 to the 1995 Act were "development consent" under the EIA Directive. Therefore, the need for EIA has to be considered prior to the imposition of new operating conditions under these legislative provisions. The need for EIA must similarly be considered when applications are determined for the periodic review of conditions under Schedule 14 to the 1995 Act.

Scope of the 2000 Regulations

30. In response to these judgments, the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2000[6] ("the 2000 Regulations") were introduced to apply the provisions of the 1999 Regulations to applications for mineral conditions reviews made after the Regulations came into force on 15 November 2000. These are applications for mineral conditions reviews made under the 1991 Act and the 1995 Act (collectively called "ROMP applications" in the 2000 Regulations). The 2000 Regulations inserted a new paragraph 26A to the 1999 Regulations which applied the 1999 Regulations to mineral conditions reviews with certain modifications.

The problem of stalled reviews of old mineral permissions

31. Informal guidance issued to accompany the implementation of the 2000 Regulations advised that the 1999 Regulations, as amended by the 2000 Regulations, were not retrospective and only applied to applications for determination of new mineral operating conditions made after 15 November 2000 (the date on which the 2000 Regulations came into force). Mpas and mineral operators were advised to voluntarily apply the principles of the 1999 Regulations, as amended, to applications pre-dating 15 November 2000 but which at that date remained to be determined. This meant that for EIA applications pre-dating 15 November 2000 applicants were asked to provide an environmental statement ("ES") voluntarily within a reasonable timescale. Most did so and new conditions have been determined for those mineral sites.

32. The Welsh Assembly Government has been aware for some time that there remain applications for new mineral operating conditions, which were submitted before 15 November 2000 which remain undetermined.

33. We know from information supplied by mpas in Wales that there are an estimated 17 applications for initial review of conditions under schedule 13 to the 1995 Act which are stalled mainly, but not exclusively, because the environmental information required to progress those applications has not been provided.

The need for action to bring stalled conditions review applications to a conclusion

34. The Welsh Assembly Government has encouraged in successive guidance notes and, more recently, in a letter in June 2006 to owners and operators of the 18 sites where applications are currently stalled, the voluntary provision of the requested environmental information without further delay

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5 R v North Yorkshire County Council ex parte (1) Brown and (2) Cartwright (1999) and R v Peak District National Park ex parte Bleaklow Industries Ltd (1999)

6 S.I. 2000 No. 293.

35. Delays at active mineral sites mean that mineral operations are continuing under old permissions with few, if any, conditions to mitigate the environmental impacts of mineral working; contrary to the objectives of the legislation introduced in the 1990s, to the court judgements at the end of the 1990s, and to the obligations imposed by the EIA Directive. The Welsh Assembly Government is firmly of the view that it is unacceptable for reviews of conditions to be delayed any further.

36. In view of the length of time which has elapsed since the Welsh Assembly Government first advised of the need for the voluntary provision of the necessary environmental information to inform the determination of modern operating conditions at mineral sites, it is clear that exhortations alone are insufficient. The Welsh Assembly Government believes that statutory backing and an appropriate sanction are needed to ensure that expeditious progress is made to enable the relatively few applications which are stalled, to be finally determined.

37. In November 2006 the Welsh Assembly Government consulted on a proposal to make regulations to amend the 1999 Regulations so as to apply those Regulations to the stalled review cases. Consideration of the issues which gave rise to the stalled review cases in Wales and in particular, consideration of a number of issues identified in responses received to the 2006 consultation exercise, indicated that there were issues particular to the stalled review cases which warranted a different approach. The 2009 Regulations are the result of this consideration.

Application of EIA to Stalled Reviews and scope of the 2009 Regulations

38. The mineral conditions reviews, which have been stalled for want of an ES or further information, or for other reasons, have been outstanding for some considerable time. They may have been subject to non-statutory screening and scoping decisions prior to the date on which the 2009 Regulations came into force, and ESs may have been submitted voluntarily in the spirit of the legislation. However, the substantial amount of time which has elapsed in some of these cases, since the date on which screening or scoping decisions were first made, or voluntary ESs were first submitted, means that the information upon which those decisions were based, or the information included in those (voluntary) ESs, may not now be up to date. This, together with the fact that mpas and the Welsh Ministers have not had statutory powers available to them to compel applicants or appellants to comply with the legislative requirements, underpins the rationale for the establishment of a bespoke, strictly time-limited statutory scheme for the expeditious determination of all stalled reviews.

39. The provision made in the 2009 Regulations is, briefly, that all stalled ROMP development is automatically deemed to be EIA development, subject to a time-limited right to request a screening direction from the Welsh Ministers; that scoping decisions are mandatory; that ESs must be submitted in draft for assessment by mpas (or the Welsh Ministers on appeal or referral) as to their satisfactoriness for publication and consultation purposes; that any failure on the part of an applicant or appellant to take any step required to be taken under the Regulations results in the automatic suspension of minerals development until the stalled review is finally determined; and that the sanction for a continued failure to comply with the requirements of the Regulations is the potential permanent cessation of permission to carry out the ROMP development which is the subject of the stalled review (other than restoration and aftercare conditions).

40. The purpose of the 2009 Regulations is to establish a bespoke statutory scheme to apply the requirements of the EIA Directive to the stalled reviews in a manner designed to secure the expeditious determination of all stalled cases in Wales.

41. An overview of the 2009 Regulations is set out at paragraph 41 below and advice on matters of general application to the stalled reviews is set out in paragraphs 44 44to 69. The EIA information procedure itself is described in steps A and 1-6 and summarised in the flow diagrams 1-5. References to regulation numbers are to those in the 2009 Regulations unless otherwise specified, and references to "the Regulations" are references to the 2009 Regulations. Each undetermined ROMP application or appeal will be subject to all of the steps identified below unless the Welsh Ministers have made a negative screening direction with respect to the ROMP development to which the application relates. Applicants and appellants have a three week period following the date on which the 2009 Regulations come into force, within which to request a screening direction from the Welsh Ministers. If a negative screening direction is not made in response to a request made within the three week period by an applicant or appellant, the only circumstance in which the steps below will not apply to an undetermined ROMP application is if the Welsh Ministers make a negative screening direction of their own volition in accordance with Article 2.3 of the EIA Directive (under regulation 9). The Welsh Ministers anticipate that the requirement for exceptional circumstances imposed by Article 2.3 of the EIA Directive will be met only in rare cases.

Section 3
Introduction to the Regulations and matters of general application

42. The Regulations apply to ROMP applications which were made before 15 November 2000 and which fall to be determined on or after the date the Regulations came into force. All other ROMP applications continue to be subject to the 1999 Regulations[7].

43. These undetermined applications are referred to throughout this Guidance as *stalled reviews*. The following is an introduction to some of the main provisions, however, this is not exhaustive:-

- Part 2 of the Regulations deals with screening. Under Part 2, all development which is the subject of a stalled review application is deemed to be EIA development, subject to a three-week period within which a screening direction may be requested from the Welsh Ministers. This means that screening decisions under the Regulations will be made only by the Welsh Ministers, not by mineral planning authorities.

- Part 3 of the Regulations deals with the preparation, submission and publication of ESs. Chapter 1 of Part 3 deals with the preparation of ESs, and covers scoping decisions and a procedure designed to assist those preparing ESs. Scoping is mandatory under the Regulations and Part 3 requires mineral planning authorities to adopt scoping decisions in relation to all stalled reviews which are before them for determination; and requires the Welsh Ministers to make scoping directions in respect of all stalled reviews which, on the date on which the Regulations come into force, are before them for determination (whether as a result of appeal under the 1991 or 1995 Acts, or as a result of referral).

  The Regulations require the adoption of a Scoping Opinion by the relevant mpa within 8 weeks of the date of these regulations coming into force, or within 8 weeks of receipt of a positive Screening Direction, or where additional information is requested, within 8 weeks of receipt of such information. Where a case is before, or subsequently referred, to Welsh Ministers, a Scoping Direction should be made as soon as reasonably practicable following the date of the regulations coming into force or 'scoping information' received.

- Chapter 2 of Part 3 deals with the submission of ESs. Regulation 17 requires a draft ES to be submitted for every EIA application within 16 weeks of the relevant scoping decision having been notified to the applicant or appellant. Regulation 18 imposes duties on mpas and Welsh Ministers to check that the content and extent of the information in a draft ES is consistent with that identified in the relevant scoping decision, and that the information is presented in a form which is appropriate for consultation purposes . It also confers power on mineral planning authorities and on the Welsh Ministers to give notice instructing an applicant to publish notice of the application and the availability of an ES for inspection; but only if satisfied that the ES in question contains all of the information identified in

[7] The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999 No. 293).

the relevant scoping decision and only if the statement is not presented in an inappropriate form. Regulations 19 and 20 impose on applicants and appellants, a requirement to submit documentary evidence of publication and deadlines for compliance with the publicity requirements imposed by the Regulations.

- Part 4 of the Regulations deals with further information, evidence and other relevant information. It enables mpas and the Welsh Ministers to require the submission of further information and evidence, and requires them to publish any other relevant information received by them (in the form of advice, reports or additional substantive information voluntarily supplied by an applicant).

- Part 7 sets out provisions which apply in cases where minerals development is suspended under the Regulations. It provides that any suspension of minerals development remains in effect until all of the actions required of applicants (or non-applicant operators) under the Regulations have been complied with; and imposes a duty on mineral planning authorities to consider whether to make prohibition orders under paragraph 3 of Schedule 9 (prohibition of resumption of mineral working) to the 1990 Act where a suspension has remained in effect for two years and any relevant requirements under the Regulations have yet to be complied with. Part 9 modifies paragraph 3 of Schedule 9 to the 1990 Act for the purposes of this duty.

Matters of general application

Need for a new ES

44. Each stalled review will require a new ES to be prepared, submitted and publicised, unless a negative screening direction is made. The reason for this is that any ES which may have been produced voluntarily prior to the commencement of the 2009 Regulations could have been produced some time ago. Therefore, some of the assessments may be outdated and may not be completed to the satisfaction of the mpa or Welsh Ministers (otherwise the reviews may not have been stalled). Above all, any ES produced before the commencement of the 2009 Regulations will not be legally acceptable as an ES for the purposes of these Regulations, which require the new, statutory, application of bespoke EIA procedures. This is not to say that environmental information already assembled as part of any earlier ES cannot form part of a new ES if it remains up-to-date and relevant to the assessment. Welsh Ministers encourage the maximum use of existing environmental information, where appropriate, as a means of reducing the burden on applicants or appellants and operators of complying with the requirements of the Regulations and the EIA Directive.

A single ES for each stalled review

45. Regulation 17(7) provides that only one draft ES may be accepted for any particular EIA application. This means that where there is more than one applicant or more than one appellant in the case of any particular stalled review, the applicants or appellants in question will need to co-operate with each other to produce a single ES covering the whole of the ROMP development authorised by the permission(s) which is the subject of the stalled review in question. The Regulations do not require applicants or appellants to jointly submit a single ES, so any applicant may do so. This is designed in acknowledgement of the fact that it may be convenient for applicants to nominate one of their number to have

responsibility for co-ordinating the submission of the collective ES. It is clearly in the interests of all applicants or, as the case may be, all appellants, to work together to produce the single ES required. If the relevant mpa or the Welsh Ministers consider that the ES which is submitted does not appear to contain all of the information specified in the relevant scoping decision, the power to require specified information can be used to target the one or more applicants (or relevant operators) who have not provided the information for their 'part' of the site.

46. The purpose of requiring a single ES is to secure that the information which is specified in the relevant scoping decision is, to the extent possible, contained in a single, coherently presented document or set of documents, which thus comprehensively consider(s) the likely environmental effects of all of the ROMP development in question. This is important because the conditions to be determined by mpas and the Welsh Ministers, are the conditions to be attached to the entire permission(s) – conditions cannot be determined solely for that 'part' of the permission which authorises the particular development proposed to be carried out by a single applicant or appellant in cases where there are other applicants or appellants, or operators, also carrying out development authorised by the same permission(s). A single, coherently presented document or set of documents containing, so far as possible, all of the information specified in the relevant scoping decision is also important because effective public participation dictates that those with an interest in an EIA application should not be required to undertake an unreasonable amount of enquiry in order to put themselves in a position to be able to establish the likely environmental effects of the EIA development in question.

47. If the Regulations were to permit more than one ES to be submitted for each stalled review, mpas and the Welsh Ministers would potentially be required to consider a number of ESs in order to determine whether all of the information specified in the relevant scoping decision is contained in them, and would also be required to consider whether a number of self contained documents, or sets of documents, properly consider, for example, the cumulative and indirect effects of each 'development' on the other.

48. To permit the submission of more than one ES for each stalled review would not remove the requirement in practice, for applicants or appellants to co-operate with each other where necessary, to facilitate the production by each of them, of separate ESs which each consider the likely environmental effects of the development proposed to be carried on by them. Furthermore, to permit more than one ES for each stalled review would not alter the fact that minerals development being carried on by all applicants or appellants under authority of the permission(s) which is the subject of the application will be suspended for a failure by any applicant to submit 'their' ES, so that the substantive legal consequences which would flow from one applicant's or appellant's failure to submit a separate ES would be the same as the substantive legal consequences which will flow from a 'joint' failure to submit a single ES.

49. The Welsh Assembly Government does not consider that the requirement for a single ES to be submitted for each stalled review should give rise to any substantively prejudicial consequences for applicants or appellants.

50. For these reasons, the Welsh Assembly Government concludes that the benefits to the EIA procedure and therefore, to the expeditious determination of the stalled reviews, which will be derived from the production of a single ES for each stalled

review, outweigh any potential substantive disadvantage to applicants or appellants arising from being prevented from submitting their own separate ESs.

Obligations on operators

51. The 2009 Regulations expressly provide for the imposition of obligations on operators who are not applicants or appellants. These obligations are to provide scoping, specified or further information or evidence, if requested in writing to do so by a relevant mpa or by the Welsh Ministers. These obligations have been imposed because there may be a number of persons operating under the authority of one or more permissions which are the subject of a stalled review, and it may be that one or some, but not all, of those persons are the applicant or appellant in any particular case. This being so, the obligations imposed by the Regulations on applicants and appellants do not strictly apply to those other persons carrying out ROMP development under authority of the permission(s), but it may be the case that as a matter of fact, it is only those other persons who can provide the information required by the Regulations. For this reason, mpas and the Welsh Ministers have a discretion to require those persons to provide scoping, specified or further information, or evidence to verify that information. This will also aid transparency in terms of the appropriateness of any future potential for enforcement action or exercise of powers to make prohibition orders.

Flexibility to extend the period for provision of the new ES

52. In some cases an ES or information may not have been voluntarily provided because applicants or appellants are intending to submit, or have submitted, planning applications –

- to consolidate several permissions (thus avoiding the need to progress the review of the old mineral permission(s));
- for permission to work replacement mineral sites; or
- for permission for alternative development.

53. In these cases, applicants or appellants may be reluctant to provide information in respect of the effects of mineral working where either the permission or the site might become redundant in the near future. Whatever the circumstances, the procedures outlined in these regulations must be applied to stalled reviews. However, at most – but not all – stages, the procedures allow mpas or the Welsh Ministers the discretion to extend the period for complying with requirements and this flexibility could be applied where the outcome of any decision on consolidation of permissions or an application for new permission for a replacement site, or application for alternative development, is awaited. Flexibility should only be exercised where an mpa or the Welsh Ministers have a clear and limited timescale for the decision and are convinced that no environmental harm will result from the delay.

54. Where an extension to the period for complying with the requirements of the Regulations is agreed with the relevant mpa or the Welsh Ministers, that agreement is required by the Regulations to be in writing. This is important because suspension of minerals development engages *automatically* under the Regulations, where an applicant or appellant fails to comply with a requirement within the period allowed for doing so. If the agreement to extend the period in

question cannot be evidenced in writing, there may be scope for disagreement or ambiguity as to precisely what extension was agreed, or whether an extension was agreed, between the applicant or appellant on the one hand, and the relevant mpa or the Welsh Ministers on the other hand. It is in the interests of all concerned therefore, to ensure that any extension of time is agreed in writing.

Extension of time for mpa to meet required steps

55. The 2009 Regulations impose strict deadlines for the completion of certain steps required to be taken by mpas under the Regulations. It is important that mpas take a constructive and pro-active approach to the exercise of their functions under the Regulations so as to play their part in the expeditious resolution of the stalled cases. Where an mpa reasonably concludes that it will not able to take a required step within the prescribed timescale there is an option available to it under regulation 5 to request a direction from Welsh Ministers for an extension of time. As the purpose of the procedures is to ensure that stalled reviews are brought to a conclusion as soon as possible the Welsh Ministers expect that any such requests will be made only in exceptional circumstances.

56. Welsh Ministers are aware that some mpas have several stalled cases before them and because the coming into force of the regulations starts in train strict deadlines for taking required steps for each and every case simultaneously, it is acknowledged that processing several cases in parallel may present an unreasonable burden for mpas. In such circumstances Welsh Ministers will look favourably on requests from mpas to extend the timescales for cases before them where an mpa is able to set out a clear, reasonable and practical timetable for complying with the regulations based on relative environmental priorities.

57. A point to note: before requesting a direction under regulation 5, an mpa must notify the relevant applicant of its intention to do so and of the applicant's right to make representations to the Welsh Ministers. The Regulations require an mpa either to confirm that it has so notified the applicant at the time of requesting a direction, or to provide its reasons for having been unable to do so prior to submitting its request. This facility is afforded to mpas in recognition of the possibility that despite having planned to do so, an mpa might find itself unable at the very last minute, to take a particular step in question; a serious IT failure for example, might be capable of giving rise to such circumstances. In such a case, an mpa would be expected to inform the applicant as soon as it became possible to do so.

58. Where an mpa has legitimate reasons for being unable to comply with prescribed requirements, it is in the mpa's interest to formalise this position by seeking a direction under regulation 5 as in doing so, an mpa affords its position a transparency to which the Welsh Ministers will have regard when considering whether to exercise their powers under regulation 6 to refer a stalled review to themselves for determination and to recover the costs of doing so from the mpa. Where the Welsh Ministers decline to make a direction in response to a request to do so, the time period within which the step must be taken is extended until 14 days after the date on which the Welsh Ministers notify the mpa in writing of that fact.

59. Both mpas and the Welsh Ministers must take such steps (other than posting site notices) as they consider most likely to bring any direction made, or written notification given, under regulation 5, to the attention of persons likely to be interested in the EIA application to which it relates.

Default Powers of Welsh Ministers

60. Under regulation 6, the Welsh Ministers may direct that a stalled review be referred to them for determination instead of being dealt with by the relevant mpa. This power is addressed to preventing a further wave of stalled reviews to emerge from the manner in which duties are imposed on mpas under the Regulations. Because mpas are required to take certain steps under the Regulations within specific time periods which cannot be extended (other than by use of the procedure under regulation 5) it is possible, albeit unlikely, that an mpa might not request an extension of time under regulation 5 and might also fail to comply with the deadline in question. If this were to be the case, the ability of an mpa to take the step in question outside the time period imposed by the Regulations might be called into question. To avoid the potential for reviews to be further delayed by questions being raised as to the validity of requests for information made by mpas outside the time periods imposed for doing so, the Regulations confer power on the Welsh Ministers to direct the application to be referred to them for determination.

61. This power is in addition to the Welsh Ministers' powers to direct that applications be referred to them for determination under paragraph 7 of Schedule 2 to the 1991 Act, paragraph 13 of Schedule 13 and paragraph 8 of Schedule 14 to the 1995 Act. It is particular to the stalled reviews and is addressed solely to securing that further delays do not prevent the expeditious determination of the reviews. The Welsh Ministers therefore do not intend to use this power of direction where the reason for referral is related to the nature of the development in question, notwithstanding that an mpa may also have failed to take a step under the Regulations within the time period allowed for doing so. It is therefore only in cases where an application would not otherwise be the subject of direction under the 1991 or 1995 Acts in which the Welsh Ministers intend to use this power.

62. If any such direction is made in circumstances where it appears to the Welsh Ministers that an mpa's failure to take the step in question was brought about by the fault or intention of the mpa, the Welsh Ministers can recover from the mpa, the costs and expenses incurred by them in dealing with the stalled review. Because the Welsh Ministers expect mpas to adopt a constructive and pro-active approach to their functions under the Regulations. they do not expect to have to make use of the power under regulation 6(2) in anything other than exceptional circumstances. In determining whether to do so, the Welsh Ministers will have regard, amongst other matters, to whether the mpa in question has made use of the opportunity available to it under regulation 5, to seek an extension of time for completion of the step in question, and to any information supplied by the mpa in response to requests for information made to the authority under regulation 7(1).

63. Both mpas and the Welsh Ministers must take such steps (other than posting site notices) as they consider most likely to bring any direction made under regulation 6, to the attention of persons likely to be interested in the EIA application to which it relates. Mpas must also place copies on the register.

Returns by mpas

64. Under regulation 7, the Welsh Ministers may require mpas to provide information with respect to the exercise by mpas, of their functions under the Regulations. The Welsh Ministers expect to make use of this power to keep up to date with the

progress of stalled reviews in Wales and to inform their consideration as to whether to exercise their default powers under regulation 6.

Sanctions

65. The 2009 Regulations take a robust, but proportionate, approach to the imposition of sanctions for failure to comply with any stage of the EIA procedure. Within each stage there are various trigger points for the engagement of sanctions, and advance warning of these trigger points must be notified to applicants and appellants in line with the mechanisms prescribed in the Regulations. The reasoning behind the notification procedures insofar as they relate to the sanctioning elements of the Regulations, is to afford clarity and transparency to applicants and appellants (and in certain cases operators) about when, and why, sanctions may engage in respect of development being carried out by them. This is important because once minerals development has been suspended under the 2009 Regulations, it *remains suspended* until such time as every requirement imposed by or under the 2009 Regulations has been complied with by the relevant applicant(s), appellant(s) or operator(s). If minerals development remains suspended for a period of two years, the relevant mpa will be under a statutory duty to consider whether to make a prohibition order under the 1990 Act in relation to some or all of the suspended minerals development. This, together with the manner in which the prohibition order powers under the 1990 Act are modified by the Regulations, means that a continued failure to comply with any requirement could ultimately result in the cessation of permission for minerals development and for this reason alone, clear and consistent notification procedures are both necessary and appropriate.

66. Clarity and transparency are also important because there is no discretion available to mpas or to the Welsh Ministers under the Regulations, to defer or to avoid suspension of minerals development – the sanction is imposed *automatically* for any failure by an applicant or appellant to comply with any substantive obligation imposed by the Regulations by the relevant deadline. Once minerals development has been suspended it can only be 'un-suspended' when every relevant requirement imposed under the 2009 Regulations has been complied with. This, together with the fact that the scope of the substantive obligations imposed on applicants, appellants and operators under the Regulations is determined primarily by the decisions made by mpas and by the Welsh Ministers under the Regulations (such as, for example, the range of information to be included in an ES, the changes required to an ES to render it fit for publication, and so forth), means that it is imperative that applicants, appellants and, where relevant, operators, are notified in good time of their rights to challenge decisions made by mpas and by the Welsh Ministers under the Regulations. The Welsh Ministers consider the sanctioning regime established by the Regulations to be robust, but proportionate, and is underpinned by the principle of advance warning and transparency of consequences intended to promote compliance with the Regulations, rather than the imposition of sanctions.

67. This means that the written notifications which mpas and the Welsh Ministers are required to give to applicants and appellants (and, in some cases, operators) at every stage of the EIA information procedure should be clearly and unambiguously drafted; specific with respect to the action required to be taken by the applicant, appellant or operator and with respect to the time period within which that action must be completed; the notifications should be unequivocal as to the date on which automatic suspension will engage for failure to comply with the obligation in question, and should clearly explain that a suspension of minerals

development will continue until *every* requirement imposed by or under the Regulations is complied with - not only the requirement which gives rise to a suspension, but all subsequent requirements also;, and that a suspension of minerals development may ultimately result in the cessation of permission for the development in question. This is of particular importance, given that suspension of development engages automatically under the Regulations. It is in no one's interests for automatic suspension of development to engage because applicants, appellants or operators did not fully understand the consequences of non-compliance, or of the next steps required of them.

Publicity for opinions, directions and notifications

68. The Regulations require mpas and the Welsh Ministers to take such steps as they consider most likely to bring all opinions, directions and written notifications to the attention of persons likely to be interested in the application to which they relate. The obligations imposed do not require mpas or the Welsh Ministers to post site notices, as this obligation is imposed on applicants and appellants (and, in some cases, on operators). Because the Regulations are primarily addressed to applicants and appellants (to reflect the terms in which the ROMP regime is framed in the 1991 and 1995 Acts), copies of screening directions (if any) and copies of scoping opinions and directions must always be sent to applicants and appellants. The fact that the Regulations do not impose express obligations to send copies of these opinions and directions, or other written notifications, to operators who are not applicants or appellants, is not intended to suggest that these operators have any less of an interest in the opinions, directions or notifications than an operator who happens to be the applicant or appellant in any particular case, rather it is a mechanism designed to promote simplicity in the Regulations. The obligations imposed on mpas and the Welsh Ministers to take the steps they consider most likely to bring opinions, directions and notifications to persons likely to be interested in any particular application, are imposed in particular, with non-applicant operators in mind. Thus, it is to be expected that in complying with the obligations imposed by the Regulations, every opinion, direction and written notification issued or given will, in particular, be drawn to the attention of non-applicant operators.

69. A failure to comply with the site notice requirement will not give rise to automatic suspension of minerals development. The Regulations have been drafted in this way because the Welsh Ministers consider that to automatically suspend minerals development for a failure to post a site notice in situations in which the relevant mpa and / or the Welsh Ministers are themselves required to take such steps as they consider most likely to bring the information in question to the attention of persons likely to be interested in the application, would be a disproportionate response to the failure in question. Applicants, appellants and operators are, however, urged to do so, not only because effective public participation demands it, but because pro-active engagement with local communities will promote good relations.

References to time periods

70. Strict deadlines are imposed by the Regulations for the completion of every step required to be taken by mpas and by applicants and appellants. In some cases however, there is a discretion for mpas and applicants (or, in the case of steps required to be taken by 'referred' applicants and by appellants, for the Welsh Ministers and applicants or appellants) to extend the deadline by agreement. Where references are made in the remainder of this Guidance to specific time

periods within which steps must be taken by mpas and by applicants or appellants, those references are to be read subject to any agreement to the contrary reached between mpas and applicants, or between the Welsh Ministers and applicants or appellants. Where there is no discretion to extend a time period under the Regulations, this fact is indicated under the relevant sections in the guidance.

71. The strict deadlines imposed on mpas for the completion of steps under the Regulations, are not correspondingly imposed on the Welsh Ministers with respect to the steps to be taken by them. This is because a combination of factors under the Regulations could give rise to the result that the Welsh Ministers are required to consider, and to make decisions in connection with, many applications otherwise being dealt with by individual mpas. This could be the case, for example, where a number of screening requests are made within the three week period following the date on which the Regulations come into force; or where a number of requests for scoping directions are made under regulation 12(9) in or around the same time. This being the case, and bearing in mind that an application may be the subject of a direction to refer at any stage during the EIA procedure, a degree of flexibility is required in order to permit proper consideration to be given to all decisions which the Welsh Ministers are required to make under the Regulations. For this reason, the Regulations generally require the Welsh Ministers to take decisions on or as soon as reasonably practicable following the date on which they have sufficient information to be able to make the decision in question.

Withdrawal of notifications

72. The Regulations enable mpas and the Welsh Ministers to require applicants, appellants and, in some cases, operators, to provide or to re-submit information at various stages throughout the EIA procedure. In every case, the requirement is imposed by means of a written notification. The Regulations entitle mpas and the Welsh Ministers to withdraw a written notification at any time between issuing the notification, and the deadline for compliance with the requirements imposed by virtue of it. The power to do so is conferred for the following reason.

73. In very broad terms, these notifications will contain instructions to provide information or to comply with other requirements under the Regulations, and will specify deadlines within which the required action must be taken. The effect of a failure to comply with a requirement within the specified deadline is that minerals development is automatically suspended under the Regulations. Where suspension is automatically engaged under the Regulations, nothing other than full compliance with every requirement imposed by the Regulations will dis-engage the automatic suspension. Without the facility to withdraw a written notification therefore, it would be impossible to prevent the automatic suspension of minerals development even where it was subsequently discovered, for example, that current methods of assessment rendered it impossible to provide the information requested.

74. The power to withdraw a written notification is not intended in any way to suggest that mpas should do other than actively address their minds to the question of whether the requirement which will be imposed by virtue of the notification is necessary and reasonable in the circumstances of the particular case in question. Part of this consideration will involve an mpa asking itself whether it would give the notification in the same form, or at all, if there were no provision in the Regulations to permit the withdrawal of the notification. If an mpa answers that question is in the negative, then an mpa might wish to consider whether it is

appropriate to give the notification in the form proposed, or at all (as the case may be).

75. This last point is particularly important, given that the withdrawal of a written notification may have significant implications for the ability of mpas to comply with the statutory deadlines imposed on them by the Regulations. To take the scoping stage as an example (and assuming for the purposes of this example that a screening direction is not requested): within 8 weeks of the date on which the Regulations come into force, mpas are required either to adopt and notify a scoping decision, or to notify the applicant that scoping information is required. If it were the case that an mpa notified the applicant at week 7, and agreed a submission deadline of 3 weeks (week 10); then to withdraw the request for scoping information at, say, week 9, would mean that the mpa would then be out of time to comply with the duty to notify its scoping opinion by week 8.

76. Were this to be the case, the ability of an mpa to take the step in question outside the time period imposed by the Regulations might be called into question. This in turn, could result in further delays in progressing the stalled reviews. Whilst it would be open to the Welsh Ministers to direct that an application be referred to them in such a case, the Government does not expect to have to consider doing so other than in very exceptional circumstances.

77. The Government considers that where the withdrawal of a notification becomes necessary as a result of less than careful consideration having been given to the issuing of the notification, then in the absence of sound justification for such an approach, that could be sufficient to found "fault" for the purposes of the Welsh Ministers power to recover the costs of dealing with an application referred to them in such circumstances.

78. For all of these reasons mpas are advised to give very careful consideration to the nature of the information or evidence which they request of applicants and operators under the Regulations; and to undertake this consideration at the very earliest opportunity. This will go some considerable way to avoiding the need to withdraw written notifications given under the Regulations and to securing that automatic suspension does not result from ill thought out requests for information.

Definitions

79. Regulation 2 contains definitions of certain terms used throughout the Regulations. ***Many of the terms defined in regulation 2 are used also in the 1999 Regulations, but it is important to note that although the terms may be the same, the meaning attributed to them may be substantively different for the purposes of the 2009 Regulations***. The attention of mpas is drawn in particular to the following definitions.

Regulation 2 Definitions

(a) **"draft environmental statement"-** The manner in which "environmental statement" is defined in the Regulations means that an ES submitted by an applicant or appellant will count as an ES for the purposes of the Regulations, only if it includes all of the information specified in the relevant scoping decision (or at least the information referred to in Part 2 of Schedule 2 – see further under "environmental statement" below) and only if it is, effectively, presented in an appropriate form. In order to secure that an ES submitted by an applicant or appellant does in fact meet the required threshold, mpas and the Welsh Ministers are required to assess the adequacy of the ES submitted, against that threshold.

For this reason, the concept of a "draft environmental statement" is introduced by the Regulations.

(b) **"EIA development"** is ROMP development in respect of which a negative screening direction has not been made. The term is defined in this way because the effect of regulation 9 is that all ROMP development which is the subject of a stalled review, is EIA development, subject to a three week period within which an applicant or appellant may request a screening direction from the Welsh Ministers. Thus, all ROMP development will be EIA development, unless the Welsh Ministers have, at the request of an applicant or appellant (or exceptionally, of their own motion), made a screening direction to the effect that the ROMP development in question is not EIA development.

(c) **"Environmental statement"** is defined as a statement which is presented in an appropriate form; that includes at least the information referred to in Part 2 of Schedule 2, that includes such of the information referred to in Part 1 of Schedule 2 as is specified in the relevant scoping decision. Thus an ES for the purposes of the 2009 Regulations is substantively of a different character to an ES for the purposes of the 1999 Regulations. The term is defined in this way, to address a number of issues which are particular to the stalled reviews.

The absence of transitional provision in the Regulations to allow (voluntary) ESs submitted before the 2009 Regulations came into force to count as ESs for the purposes of the 2009 Regulations, means that all applicants and appellants are obliged to submit an ES afresh, regardless of whether they have previously submitted an ES voluntarily. The Welsh Ministers are concerned to secure that ESs submitted in response to the obligations imposed by the 2009 Regulations are adequate for the purposes for which they are intended, and have consequently defined an ES in terms which are designed to secure that result.

The first element of the definition means that an ES which is presented in an inappropriate form will not count as an ES for the purposes of the Regulations, even if it includes all of the information identified in the relevant scoping decision. The purpose of this element of the definition is to avoid the need for those with an interest in the ROMP development in question to have to undertake an unreasonable amount of enquiry in order to put themselves in a position to be able to establish the likely environmental effects of the ROMP development. In defining 'environmental statement' to include this requirement, we are mindful that applicants and appellants may wish to use (voluntary) ESs as, or as the basis for, ESs which are required to be submitted under the 2009 Regulations and that incremental requests for further information by mpas may mean that the (voluntary) ES in question may comprise a potentially large number of documents, some of which update or add to, previously submitted documents. This element of the definition is intended in part, to prevent previously submitted information from being re-submitted in an incoherent form and is intended to give effect to Article 5.1 of the EIA Directive.

The second element of the definition means that the minimum information which an ES can contain is that referred to in Part 2 of Schedule 2. The effect of this element of the definition is that even in the unlikely event that an MPA were to adopt a scoping opinion which identified a narrower range of information than that referred to in Part 2 of Schedule 2, an applicant or appellant would nevertheless be required to include in his or her ES, the information referred to in Part 2 of Schedule 2. This element of the definition gives effect to Article 5.3 of the EIA Directive.

The third element of the definition makes a direct link between the scope of the information to be contained in an ES and the scope of the information identified in the relevant scoping decision, so that the submission of an ES which omits information identified in the relevant scoping decision will not count as compliance

with the duty to provide an ES for the purposes of the Regulations and unless the omission is remedied by the provision of the information in question (within the relevant time period), minerals development will be automatically suspended until every requirement imposed by or under the Regulations is complied with. This link has been made because we acknowledge that an element of certainty as to the scope of information which is required to be included in an ES is beneficial to applicants and appellants, and because the results of both the 2006 and 2009 consultation exercises highlighted incremental requests for further information by mpas as an issue of concern to applicants and appellants. The link has also been made because the Welsh Assembly Government is mindful that without it, the review process may be delayed by repeated requests for further information in order to render an ES sufficient for publication and consultation. This element of the definition, together with the manner in which scoping opinion and scoping direction are defined, and the obligations imposed on mpas and the Welsh Ministers to consider the satisfactoriness of ESs for publication purposes, are intended to secure that ESs published under the 2009 Regulations will be up-to-date and fit for the purposes for which they are intended.

(d) **"Further information"** is information which an mpa or the Welsh Ministers reasonably consider relates to the main effects of the EIA development, or which is of material relevance to the determination of conditions to which the planning permission is to be subject. This differs from the concept of further information in the 1999 Regulations which is concerned with information which the ES should contain in order to be an ES. Ultimately both concepts are designed towards the same end (that is, the provision of sufficient information to permit the likely environmental effects of the development to be properly assessed), but because the 2009 Regulations define "environmental statement" by reference to the contents of the relevant scoping decision, once that information has been provided in an appropriate form, the ES is complete and consequently, no additional information is required in order to render that ES an ES for the purposes of the 2009 Regulations. For this reason, "further information" under the 2009 Regulations will be information which was not specified in the relevant scoping decision and which is not, therefore, required to be contained in an ES.

The Welsh Ministers are aware that applicants and appellants have on occasion, expressed concern regarding the amount and relevance of information being requested of them by mpas, and that mpas may sometimes be unsure about how much information is enough to permit the likely environmental effects of the development to be properly assessed. The Welsh Ministers are also conscious that repeated requests for information which, whilst of potentially peripheral interest, is not in fact necessary to enable the likely environmental effects to be properly assessed, contributes to unnecessary delays in the EIA procedure and ultimately therefore, to the determination of up-to-date conditions. To address these issues, "further information" is defined in the Regulations as being information which is either reasonably considered by mpas or the Welsh Minister to *relate to the main effects of the ROMP development* or which mpas or the Welsh Ministers reasonably consider *is of material relevance to the determination of conditions to which the planning permission is to be subject*; and in either case, which *can reasonably be required to be provided, having regard in particular to current knowledge and methods of assessment*. Thus, the definition of "further information" contains within it, a two part test which is intended to assist mpas to identify with greater precision, the information which is necessary and which the applicant can realistically be expected to provide.

(e) **"The land"** – is defined by reference to the area to which the planning permission or permissions which are the subject of the ROMP application relates, not by reference to the area in which an applicant proposes to carry out development;

(f) **"Negative screening direction"** is a screening direction made by the Welsh

Ministers to the effect that ROMP development is not EIA development.

(g) **"Operator"** is defined as any person other than the applicant or appellant, who is entitled to carry out any of the ROMP development which is authorised by the planning permission(s) which is the subject of the application. This definition is new, and is needed because of the new obligations imposed on operators by the Regulations. The Regulations permit mpas and the Welsh Ministers to require persons who are entitled to carry out ROMP development under authority of the planning permission(s) which is the subject of a stalled review, to provide scoping, specified or further information or evidence.

(h) **"The relevant scoping decision"** is a label used to identify the most recent scoping decision made in respect of any particular application. The importance of being able to identify the most recent scoping decision is that it is that decision by reference to which certain substantive consequences flow. Thus for example, the question of whether information is missing from a draft ES, and therefore whether the non-provision of that information may result in suspension of minerals development is, in part, made by reference to the information specified in the most recent scoping decision. Because more than one scoping decision may be made in respect of any one particular application (where the Welsh Ministers adopt a substitute scoping decision, for example), it is important that there is clarity as to which decision counts for the purposes of the consequences which will flow from it. The label is also a mechanism designed to promote simplicity in the Regulations, by avoiding the need to repeat the text at (a) to (d) of the definition, at every place where the label is used.

(i) **"ROMP development"** – because the Regulations deal only with the stalled reviews, "ROMP development" is defined by reference to those cases;

(j) **"Scoping direction" –** see "scoping opinion";

(k) **"Scoping information"** is information which is required by mpas or the Welsh Ministers in order to be able to make a scoping decision;

(l) **"Scoping opinion"** – the definition of this term differs from the definition which applies for the purposes of the 1999 Regulations. The term is defined for the purposes of the stalled reviews in a manner designed to focus consideration on precisely the type of information to which Article 5 of the EIA Directive is addressed, and which the applicant or appellant can reasonably be required to provide. The term is defined in this way for a number of reasons. Firstly, the manner in which "environmental statement" is defined for the purposes of the stalled reviews means that substantive legal consequences flow from the information specified in a scoping opinion. That information must be contained in a draft ES and if it is not, and is not subsequently provided, minerals development will automatically cease to be authorised by the planning permission(s) which is the subject of the application in question. Because of this, it is important that the information specified in scoping opinions does not comprise a wish-list of all conceivable information which may be of potential and peripheral interest to the particular development in any case, but that the information specified is focused, relevant in the context of the specific characteristics of the particular development in question and in the context of the environmental features likely to be affected by that development, is realistic and which it is reasonable to require the applicant to compile given, in particular, current knowledge and methods of assessment.

Secondly, tying the definition to the information to which Article 5 of the EIA Directive is addressed, is designed to secure that the scoping opinions which are adopted under the 2009 Regulations are firmly derived from the application of the considerations which shape the Article 5 requirement.

(m) **"Screening information"** is information which the Welsh Ministers require in

order to be able to make a screening direction;

(n) **"Suspension date"** – this is date on which a planning permission ceases to authorise minerals development. Because a suspension of minerals development takes effect from the end of the relevant period (which will either be the end of the default period specified in the Regulations, or the end of any extended period agreed in writing with the relevant MPA or the Welsh Ministers), the suspension date will be the day following the day on which the relevant period ends. The significance of this term is two fold. Firstly, any minerals development carried out before the suspension date is not affected by a suspension of minerals development, so that development is not rendered unauthorised by the suspension (regulation 42(2)). Secondly, the duty imposed on mpas to exercise their functions under paragraph 3 of Schedule 9 to the 1990 Act (prohibition orders), arises where a period of two years has elapsed, beginning with the suspension date, and any of the requirements mentioned in regulation 48(3) have yet to be complied with;

(o) **"unauthorised minerals development"** is a label used to identify minerals development which has ceased to be authorised by a planning permission in consequence of the automatic suspension of minerals development. The label is a technique of convenience used for the purposes of delineating the parameters of the duty on mpas to exercise their functions under paragraph 3 of Schedule 9 to the 1990 Act (prohibition orders). That duty arises where, in relation to any unauthorised minerals development, a period of two years has elapsed, beginning with the suspension date, and any of the requirements specified in regulation 48(3) have yet to be taken. Thus, the duty only arises where minerals development has remained unauthorised for a period of two years;

(p) Regulation 2(2) – references in the Regulations to referral of an application to the Welsh Ministers are to be interpreted as including a referral made by virtue of a direction given by the Welsh Ministers under regulation 6. This provision is required in order to ensure that the functions exercisable by the Welsh Ministers in relation to referred applications, are exercisable by the Welsh Ministers in relation to applications referred to them under the Regulations;

(q) Regulation 2(4) – references to "suspension of minerals development" in the Regulations are to be interpreted as references to a planning permission ceasing to authorise minerals development by virtue of any provision under which a suspension of minerals development can be automatically engaged. This provision is a technique of convenience used to simplify the Regulations so that the provisions under which a planning permission may cease to authorise minerals development do not have to be repeated in every place where a reference to the effect of a suspension of minerals development needs to be made;

Format of ESs, information, evidence etc.

80. Regulation 8 requires environmental statements and any other information or evidence which must be provided by applicants and appellants under the Regulations, to be submitted in paper and electronic format. This requirement has been introduced to facilitate effective consultation and public participation. It is a reflection of the fact that the volume of information contained in an environmental statement can be extensive and consequently, when presented solely in electronic format, can be difficult to negotiate.

Section 4
The EIA procedure

81. The EIA information procedure under the 200X Regulations comprises broadly three stages, with screening representing a preliminary and optional step (Step A):-

(a) Preparing an ES (Steps 1 and 2)
(b) Submitting a draft ES (Step 3)
(c) Publication of, and consultation on, ESs (Step 4)
(d) Further information and evidence required (Steps 5 and 6)

Step A: Screening Directions

82. The Regulations automatically screen ROMP development which is the subject of an undetermined ROMP application as EIA development, subject to a three week period within which an applicant or appellant can request a screening direction from the Welsh Ministers

83. Therefore, in the absence of a negative screening direction by the Welsh Ministers, all stalled reviews in Wales are subject to the provisions of the Regulations and consequently, conditions cannot be determined without consideration of the environmental information. This accords with Articles 4.1 and 4.2(b) of the EIA Directive (85/337 /EEC) which, respectively, require EIA for projects listed in Annex I of the EIA Directive, and allows for the setting of statutory thresholds and criteria for the purposes of determining whether projects listed in Annex II to the EIA Directive are to be made subject to EIA. This means that mpas will not adopt screening opinions under the Regulations and that consequently, the first formal step which mpas are required to take under the Regulations will be concerned with scoping opinions under regulation 12.

84. There is no requirement imposed on applicants or appellants to request a screening direction; any such requests are entirely optional. If no screening request is made within three weeks of the date on which the Regulations come into force, an applicant or appellant looses the right conferred by the Regulations to challenge the automatic screening of the ROMP development in question as EIA development.

85. **Step A1: Making a request for a screening direction – action by applicants and appellants**: if an applicant or appellant wishes to exercise the right to request a screening direction from the Welsh Ministers, that request must be made within three weeks of the date on which the Regulations come into force. If the request is not made within the three week period allowed for doing so, an applicant or appellant looses the right to request a screening direction under the Regulations.

86. The attention of applicants and appellants is drawn to the fact that, because it is "ROMP development" which is the subject of a screening direction, the decision to be made by the Welsh Ministers is a decision as to whether the remaining development authorised by the planning permission(s) is EIA development. Thus, for example, where the applicant or appellant is one of multiple operators carrying out minerals development authorised by a single permission, the screening direction will not relate solely to the development proposed by the applicant or

appellant, but to all of the development authorised by the permission(s) which has yet to be carried out.

87. The attention of applicants and appellants is also drawn to the effect of regulation 11(10), which requires the Welsh Ministers to direct that development appearing in the list in Annex II to the EIA Directive is EIA development. Currently, quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares, appears in the list in Annex I to the Directive and consequently, where the totality of the remaining permitted development meets that threshold, a negative screening direction cannot be made under regulation 11. It is worth noting also that, although the Welsh Ministers do have power under regulation 9 of their own volition, to direct that particular ROMP development is exempted from the application of the Regulations in accordance with Article 2.3 of the EIA Directive, the Welsh Ministers anticipate that the requirement for exceptional circumstances imposed by Article 2.3 of the Directive will be met only in rare cases.

88. The information which must be submitted to the Welsh Ministers with a screening request is:

(i) a copy of the ROMP application;

(ii) a plan sufficient to identify the land;

(iii) a description of the nature and purpose of the ROMP development and its possible effects on the environment;

(iv) any representations that the applicant or appellant wishes to make.

89. The attention of applicants and appellants is drawn in particular to the information specified at (ii) and (iii) above. The plan required under (i) above is a plan which identifies the land to which the planning permission(s) which is the subject of the ROMP application relates, which may not necessarily be the same as the land on which the applicant or appellant proposes to carry out development. The information mentioned at (iii) is framed by reference to the ROMP development. Because of the manner in which "ROMP development" is defined in the Regulations the information in question is information concerning all of the development which has yet to be carried out which is authorised by the permission(s) which is the subject of the ROMP application. Thus, where there are persons other than the applicant or appellant who propose to carry out development under authority of the permission(s) which is the subject of the ROMP application, the effect of (iii) above will be to require the applicant or appellant to describe the nature and purpose of the development proposed by those other persons also, along with the possible effects of that other development on the environment.

90. Where a screening request is made by an applicant whose application is being dealt with by an mpa, the applicant must send a copy of the screening request to the mpa and a copy of any representations being made by the applicant to the Welsh Ministers. The information specified at sub-paragraphs (i) to (iii) above does not need to be provided to the relevant mpa, as it will already have that information in its possession. It is important that applicants notify the relevant mpa that a screening request has been made to the Welsh Ministers at the earliest possible opportunity, as the deadline for compliance with the scoping related duties imposed on mpas by regulation 12 are deferred in these cases until

the expiration of three weeks following date on which a screening direction is made by the Welsh Ministers. If an applicant does not notify the relevant mpa in good time, the mpa may not know to postpone compliance with its scoping related duties under the Regulations.

91. It may be the case that on receipt of the information submitted with a screening request, the Welsh Ministers have sufficient information to make a screening direction. If this is the case, the Welsh Ministers are required to do so as soon as reasonably practicable following receipt of the request and proceed to Step A3. If this is not the case, the Welsh Ministers will proceed to Step A2.

92. **Step A2: Requesting screening information** - action by the Welsh Ministers If the Welsh Ministers do not have sufficient information to be able to make a screening direction they are required to notify the applicant, appellant or a relevant operator in writing of the *screening information* required as soon as reasonably practicable following receipt of a screening request. The notification will be accompanied by written notification of the matters set out in paragraph 2 of Schedule 3 which are, in summary:

(i) the date by which the screening information must be provided;

(ii) that if the screening information is not provided by the date it is required, minerals development will be automatically suspended;

(iii) that the automatic suspension of minerals development will remain in effect until the conditions to be attached to the permission are finally determined, and an explanation of what "finally determined" means in the context of the particular stalled case in question;

(iv) that if minerals development remains suspended for a period of two years and any of the steps which are required to be taken by the applicant or appellant under the provisions mentioned in regulation 48(3) have yet to be taken, the mpa will be required to consider whether to make a prohibition order under paragraph 3 of Schedule 9 to the 1990 Act with respect to the ROMP development in question; and that for the purposes of that duty-

- a prohibition order may be made in relation to part of a site (in addition to the whole of a site);

- an mpa must assume that minerals development has permanently ceased where minerals development has been suspended for a period of two years and it appears to the authority that resumption of minerals development to any substantial extent is unlikely;

- an mpa must disregard minerals development which is suspended when considering the preceding question, such that that the question to be addressed is whether it appears to the authority that the resumption of authorised minerals development to any substantial extent is unlikely; and

- that a confirmed prohibition order can have effect to terminate planning permission for part of the minerals development to which it originally extended.

(v) that the applicant or appellant is required to publicise the written notification by site notice, and an explanation of the requirements imposed in that respect by regulation 46;

(vi) the right to challenge the notice and the time period for doing so.

93. A copy of any written request for screening information must be sent to the relevant mpa, and both the authority and the Welsh Ministers are required to take such steps (other than posting site notices) as they consider most likely to bring the notification to the attention of persons likely to be interested in the EIA application. The mpa is also required to place a copy of the notification on the register.

94. Whilst the responsibility for providing screening information is borne by applicants and appellants (or in some cases, relevant operators), the Welsh Ministers are also entitled to request the relevant mpa to provide such information as it can in relation to the screening information requested of the applicant, appellant or operator. Thus where, for example, the screening information required includes information in relation to the surface area of the site, it may be the case that records held by the relevant mpa are more accurate that information which is capable of being provided by the applicant or appellant.

95. Receiving a request for screening information – action by applicants, appellants and operators: An applicant, appellant or operator who receives a written notification requesting screening information must take action in two respects – post a site notice, and provide the information requested.

96. The applicant, appellant or operator must post a copy of the written notification received on the land within 14 days of the date of the notification, and must leave it in place for a period of at least 14 days. The copy must be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land. The obligation to post a site notice does not apply if an applicant, appellant or operator does not have, and is not reasonably able to acquire, the rights required to comply with that obligation.

97. Screening information must be provided by the end of the three week period which begins with the date on which the notice requesting the screening information is given by the Welsh Ministers, unless an extension to the three week period has been agreed in writing with the Welsh ministers. Applicants, appellants and operators should note in particular here, that the three week period runs from the date on which the notice if *given* by the Welsh Ministers – not the date on which the notice is received by the applicant. In those cases where an extension has been agreed in writing, the screening information must be provided by the date on which the extended period ends. If it is not, minerals development will be automatically suspended until every requirement imposed on the applicant or any relevant operator by or under the Regulations, has been complied with.

98. The Regulations enable the Welsh Ministers to withdraw a request for screening information at any time between issuing the notification and the deadline for submission of the information.

99. Provision of information by mpas: If an mpa receives a request to provide information in relation to screening information, the mpa must respond to that request in writing within three weeks of the date on which that request is made, or within such longer period as is agreed in writing with the Welsh Ministers. The written response must either comprise such information as the MPA can provide, or the mpa's reasons for being unable to provide any information. The duty to provide a written response, and the imposition of a deadline for the provision of that response, is designed to avoid the potential for a screening direction to be made prematurely. This might arise for example, where an mpa is in fact collating relevant information for the purposes of providing it to the Welsh Ministers, but the Welsh Ministers, being unaware of that fact, proceed to make a scoping direction in the absence of that information. This could result in a screening direction being made without having taken into account all relevant information and consequently, might be capable of calling into question the validity of the decision comprised in the direction. For this reason, mpas are required to respond in writing to a request made under regulation 11(7).

100. **Step A3: Making a Screening Direction** – action by the Welsh Ministers on receipt of screening information: The Welsh Ministers are required to make a screening direction as soon as reasonably practicable following the date on which they have sufficient information to be able to do so. This will either be the later of the date on which screening information is provided, or the date on which a written response is received from a relevant mpa under regulation 11(7).

101. By virtue of regulation 9(3), the Welsh Ministers are required when making a screening direction, to take into account those of the selection criteria set out in Schedule 1 to the Regulations which are relevant to the ROMP development in question. The selection criteria are listed under three broad headings in Schedule 1 comprising the characteristics and location of the development and the characteristics of the potential impact of the development and reflect those contained in the Directive. Where appropriate, as part of its consideration, Welsh Ministers may consult with the consultation bodies. In such circumstances, although there are no timescales prescribed in the regulations, a timely response would be expected.

102. Once a screening direction is made, the Welsh Ministers are required to send a copy of the direction to the applicant or appellant and, where the direction is to the effect that the ROMP development is EIA development, the copy of the direction must be accompanied by written notification of the matters set out in paragraph 3 of Schedule 3. Those matters are, in summary-

(i) the fact that the ROMP development in question has been screened as EIA development means that the conditions to be attached to the permission cannot be determined without consideration of the environmental information, and an explanation of what "environmental information" means;

(ii) that the applicant or appellant will be required to provide an ES in due course;

(iii) for cases where the screening direction relates to an application which is before an mpa for determination, that the mpa is now required to adopt a scoping opinion under regulation 12; for cases where the screening direction relates to an application or appeal which is before the Welsh

Ministers for determination, the fact that the Welsh Ministers are now required to make a scoping direction under regulation 14;

(iv) that if scoping information is required and is not provided within the time period allowed for doing so, minerals development will automatically be suspended;

(v) that an automatic suspension of minerals development will remain in effect until every requirement imposed by or under the Regulations has been complied with; not only the requirement which gives rise to a suspension, but all subsequent requirements also;

(vi) that if minerals development remains suspended for a period of two years and any of the steps which are required to be taken by the applicant or appellant under the provisions mentioned in regulation 48(3) have yet to be taken, the mpa will be required to exercise its functions under paragraph 3 of Schedule 9 to the 1990 Act with respect to the ROMP development in question;

(vii) for cases where the direction relates to an application which is before an mpa, that if the mpa fails to notify the applicant of its scoping opinion within six weeks of the date of the direction or, if scoping information is required, within six weeks of receipt of that scoping information, the applicant is entitled to request a scoping direction from the Welsh Ministers;

(viii) that the applicant or appellant is required to publicise the written notification by site notice, and an explanation of the requirements imposed in that respect by regulation 46;

(ix) the right to challenge the notice and the time period for doing so.

103. By virtue of regulation 9(4)(a), any screening direction made by the Welsh Ministers must be accompanied by a clear and precise written statement of the full reasons for the decision made as to whether the ROMP development in question is or is not EIA development.

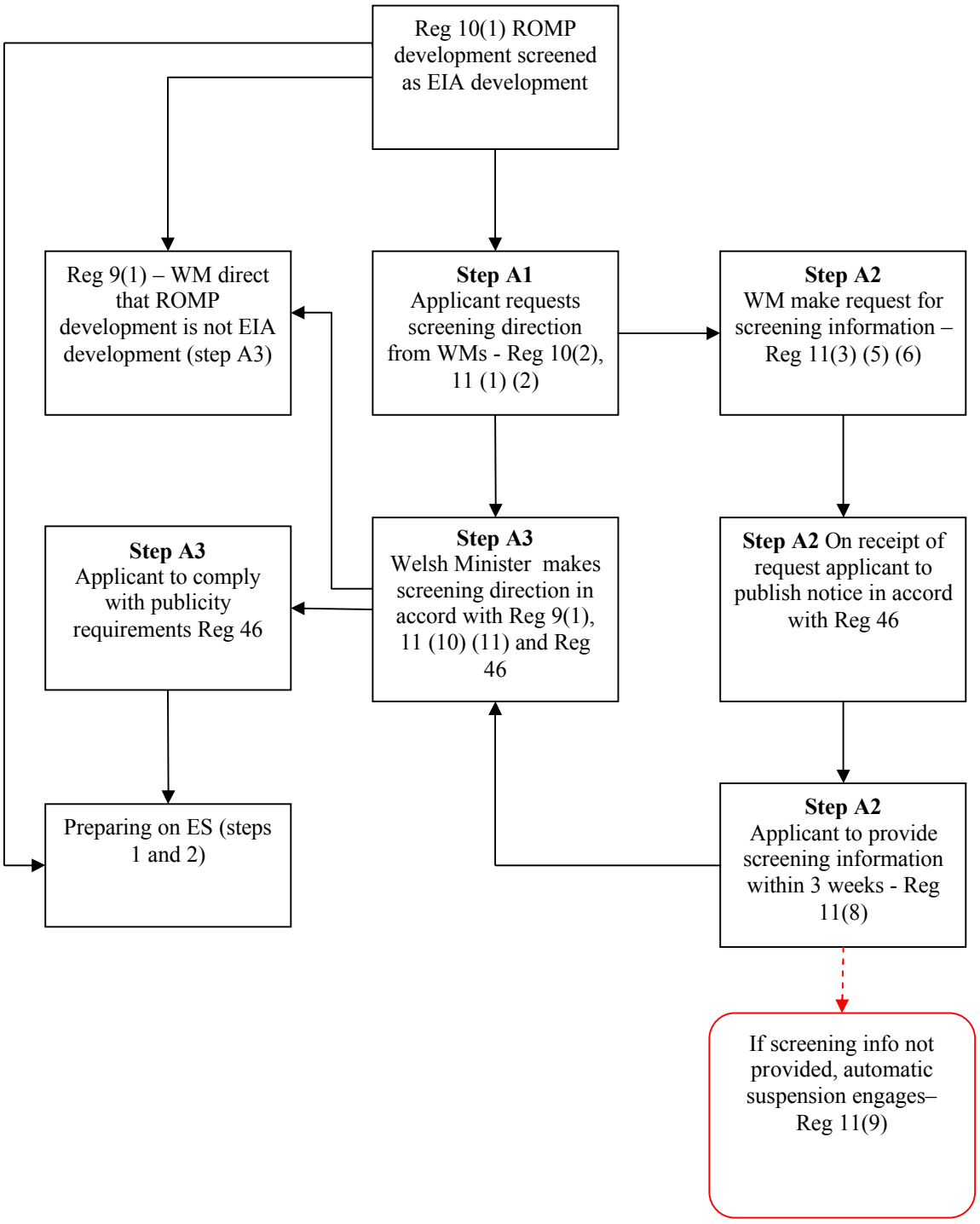
104. By virtue of regulation 9(4)(b), the Welsh Ministers are required to send a copy of the direction and the written statement of reasons to the applicant or appellant, and to the relevant mpa.

105. Where the screening direction relates to an application which is before an MPA for determination, the mpa is required to take such steps (other than posting a site notice) as it considers most likely to bring the screening direction, the statement of reasons which accompanies the direction, and the written notification of the matters set out in paragraph 3 of Schedule 3 which accompanies the direction (which will be the case unless the direction is a negative screening direction), to the attention of persons likely to be interested in the EIA application. The mpa is also required to place a copy of the direction, statement of reasons and written notification on the register.

106. The Welsh Ministers are required to take such steps (other than posting site notices) as they consider most likely to bring to the attention of persons likely to be interested in the application, any screening direction made by them, the accompanying statement of reasons and any written notification.

107. Receiving a screening direction – action by applicants and appellants: The applicant or appellant must post a copy of the screening direction, the accompanying statement of reasons, and the written notification received with the direction, on the land within 14 days of the date of the direction, and must leave it in place for a period of at least 14 days. The copy must be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land. The obligation to post a site notice does not apply if an applicant or appellant does not have, and is not reasonably able to acquire, the rights required to comply with that obligation.

Fig 1: Summary - Screening Directions



Preparing an Environmental Statement

108. The preparation procedures are designed to secure the provision of an up to date ES through the issue of mandatory scoping opinions or directions (replacing any non-statutory opinions and directions previously issued) within prescribed time periods. The submission and publishing procedures establish a framework for ensuring that an adequate ES is available for consultation within a reasonable timescale. The approach seeks to avoid situations where continual requests for additional information results in a fragmented and incoherent collection of information gathered over a prolonged period of time, which does not provide the currency or transparency required by the EIA Directive.

Steps 1 and 2: Scoping opinions and directions

109. Two of the key principles underlying the imposition of a mandatory scoping requirement for the stalled review cases are: –

(a) that the scoping authorities should, at the outset of the EIA procedure, give thorough consideration to the question of the range of information which an ES should reasonably include in any particular case, including that contained in Part 1 of Schedule 2, rather than relying on the ability to make repeated requests for further information to arrive at the same result; and

(b) that applicants and appellants should, where consistent with the requirements of the EIA Directive, be afforded a degree of certainty upon which they can legitimately base decisions concerning arrangements for collation of the range of information which they are required to provide.

110. It is important to note the manner in which "scoping opinion" and "scoping direction" are defined. This means that mpas and the Welsh Ministers must set out clearly in their scoping opinions and directions the scope of the information referred to in Part 1 of Schedule 2 which they consider is reasonably required in any particular case, to assess the environmental effects of the ROMP development in question and which they consider the applicant or appellant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile.

111. Mpas should be aware that the Welsh Ministers want applications to be determined as soon as reasonably practicable. It is expected, by the manner in which "scoping opinion" and "scoping direction" are defined, that proper consideration is given to the range of information which is necessary in any given case, and the extent to which information can reasonably be required to be compiled, given current knowledge and methods of assessment. This is to secure that scoping decisions do not extend to an exhaustive wish-list of information which is not essential, and which could not reasonably be required to be provided. The European Commission has published guidance on scoping which the Welsh Assembly Government commends to mpas as a useful tool to assist them in carrying out their scoping duties under the Regulations. The guidance is entitled "Guidance on EIA Scoping" and is available at http:/ec.europa.eu/environment/eia/eia-support.htm

112. **Step 1: Requesting scoping information:** mpas and the Welsh Ministers may already have sufficient information for some or all of the stalled reviews before them for determination, to be able to adopt scoping opinions or to make scoping directions. If this is the case, the EIA information procedure will start for those reviews at Step 2.1 (consultation prior to making scoping decisions).

113. **Step 1.1: making a request for scoping information - action by mpas and the Welsh Ministers**: In some cases, mpas or the Welsh Ministers may need additional information in order to be able to adopt an up to date scoping opinion, or to make an up to date scoping direction. Where this is the case, this *scoping information* must be requested by the relevant mpa within 8 weeks of the Regulations coming into force, unless a screening direction has been requested by an applicant under regulation 10(2); in which case the mpa must request scoping information within 8 weeks of receiving a copy of a positive screening direction from the Welsh Ministers[8] (because unless the Welsh Ministers make a positive screening direction in such cases, the Regulations – and consequently, the need for scoping information – will not apply to the stalled review in question). Where a case is before Welsh Ministers for determination, then scoping information must be requested as soon as reasonably practicable following the date on which the Regulations come into force, unless the applicant or appellant has requested a screening direction under regulation 10(2), in which case the Welsh Ministers must request the scoping information as soon as reasonably practicable after having made a positive screening direction in respect of the case in question.

114. Where a stalled review application is referred to the Welsh Ministers on or after the date on which the Regulations come into force, and a scoping opinion has not been notified to the applicant under regulation 12(8), and the Welsh Ministers have not made a scoping direction in respect of that application under regulation 13 (that is, in response to a request in that behalf by the applicant for failure of the relevant mpa to notify him or her of the mpas scoping opinion), the Welsh Ministers must, if they require additional information in order to be able to make a scoping direction, request the scoping information as soon as reasonably practicable following the referral of the application in question.

115. Although there is nothing in the Regulations to prevent mpas from making more than one request for scoping information within the 8 week period applicable in any particular case, the Welsh Ministers expect mpas, and consultation bodies, to consider carefully at the outset, the nature and extent of the information which will be sufficient for the purposes of adopting a scoping opinion, so that unnecessary iterations and resulting delays are avoided. The attention of mpas, and the consultation bodies, is drawn to the fact that the 8 week period cannot be extended by agreement between mpas and applicants. This means that where scoping information is required, but not requested within the 8 week period, mpas will be unable to adopt a scoping opinion and consequently, the right of an applicant to request a scoping direction from the Welsh Ministers will arise under regulation 12(9) at the expiration of the relevant 8 week period. If an mpa does not have sufficient information to adopt a scoping opinion, but reasonably concludes that it will be unable to comply with the duty to request scoping information within the 8 week period applicable in any given case, the mpa can make use of the procedure in regulation 5 to request a direction from the Welsh Ministers to extend the period for making the request.

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[8] The Welsh Ministers are required to send a copy of any screening direction made under the Regulations to the relevant mpa by virtue of regulation 9(4).

116. The Regulations require scoping information to be provided within three weeks of the date on which the notice which requests it is given, or such longer period as may be agreed in writing with the mpa or the Welsh Ministers. The Welsh Ministers would not expect the period to be extended by agreement in order to facilitate avoidable or unreasonable delays, but to be used sparingly where, in all the circumstances of the particular case in question, the scoping information requested cannot reasonably be required to be provided within the three week period.

117. It is important that applicants and appellants and where appropriate, operators, are made aware at every stage of the EIA information procedure, of the next procedural steps required to be taken by them, and by the relevant mpa or the Welsh Ministers, along with the consequences which will flow from non-compliance with the requirements of the Regulations. For this reason, the written notifications which mpas and the Welsh Ministers are required to give to applicants and appellants and, in certain cases, operators, should be clearly and unambiguously drafted. At the scoping information stage, this means that in all instances, requests by mpas or the Welsh Ministers for scoping information must be made in writing and should clearly indicate the scoping information required. The request must be accompanied by written notification of certain relevant matters specified in Schedule 3[9]. This means that, broadly speaking, every request for scoping information will be accompanied by the following information:

(a) the date by which the scoping information must be provided;

(i) that if the scoping information is not provided by the date specified, minerals development will automatically be suspended, apart from restoration and aftercare conditions;

(ii) that an automatic suspension of minerals development will remain in effect until every requirement imposed by or under the Regulations has been complied with; not only the requirement which gives rise to a suspension, but all subsequent requirements also

(iii) that if minerals development remains suspended for a period of two years and any of the steps which are required to be taken by the applicant under the provisions mentioned in regulation 48(3) have yet to be taken, the MPA will be required to consider whether to make a prohibition order under Schedule 9 to the Act with respect to the ROMP development in question; and that for the purposes of that duty-

- a prohibition order may be made in relation to part of a site (in addition to the whole of a site);

- an mpa must assume that minerals development has permanently ceased where minerals development has been suspended for a period of two years and it appears to the authority that resumption of minerals development to any substantial extent is unlikely;

[9] Where an mpa is making the request for scoping information, the relevant matters are those set out in paragraph 4 of Schedule 3; where the Welsh Ministers are making the request for scoping information in response to a request made under regulation 12(2), the relevant matters are those set out in paragraph 7 of Schedule 3; where the Welsh Ministers are making the request for scoping information in respect of a case which is before them for determination, the relevant matters are those set out in paragraph 8 of Schedule 3.

- an mpa must disregard minerals development which is suspended when considering the preceding question, such that that the question to be addressed is whether it appears to the authority that the resumption of authorised minerals development to any substantial extent is unlikely; and

- that a confirmed prohibition order can have effect to terminate planning permission for part of the minerals development to which it originally extended.

(iv) that the MPA cannot adopt a scoping opinion or, as the case may be, the Welsh Ministers cannot make a scoping direction, without consulting the applicant, appellant or, as the case may be, any relevant operator, without consult and the consultation bodies;

(v) that the adoption of a scoping opinion by an mpa, or the making of a scoping direction by the Welsh Ministers, does not preclude the mpa or the Welsh Ministers from requiring the applicant, appellant or any relevant operator to provide further information under regulation 26 or evidence under regulation 27;

(vi) that the applicant or appellant is required to publicise the written notification by site notice, and an explanation of the requirements imposed in that respect by regulation 46;

(vii) the right to challenge the written notification and the time period for doing so.

118. Where the request for scoping information is made by an mpa, the written notification which will accompany the request must also explain that if the MPA does not notify its scoping opinion within 8 weeks of receiving the scoping information, the applicant will be entitled under regulation 12(9) to request the Welsh Ministers to make a scoping direction.

119. A request for scoping information may be withdrawn at any time between the issuing of the notification and the deadline for submission of the information.

120. Mpas and the Welsh Ministers must takes such steps (other than posting site notices) as they consider most likely to bring the request and the written notification to the attention of persons likely to be interested in the EIA application. The mpa is also required to place a copy of the notification on the register.

121. **Step 1.2: receiving a request for scoping information – action by applicants, appellants and operators**: An applicant, appellant or operator who receives a written notification requesting scoping information must take action in two respects – post a site notice, and provide the information requested.

122. The applicant, appellant or operator must post a copy of the written notification received on the land within 14 days of the date of the notification, and must leave it in place for a period of at least 14 days. The copy must be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land. The obligation to post a site notice does not apply if an applicant, appellant or operator does not have, and is not reasonably able to acquire, the rights required to comply with that obligation.

123. Scoping information must be provided by an applicant, appellant or operator by the end of the three week period which begins with the date on which the notice requesting the scoping information is given by the MPA or the Welsh Ministers, unless an extension to the three week period has been agreed in writing with the mpa or the Welsh Ministers. Applicants, appellants and operators should note in particular here, that the three week period runs from the date on which the notice is *given* by the mpa or the Welsh Ministers – not the date on which the notice is received by the applicant, appellant or operator. In those cases where an extension has been agreed in writing, the scoping information must be provided by the date on which the extended period ends. If the scoping information is not provided by the date it is due, minerals development will be suspended (apart from restoration and aftercare conditions) until every requirement imposed by or under the Regulations has been complied.

124. **Step 2: Making a Scoping Decision**

125. **Step 2.1: consultation prior to making scoping decisions - action by mpas and the Welsh Ministers**: Before adopting a scoping opinion or making a scoping direction an mpa or the Welsh Ministers must consult the applicant or the appellant and any relevant operator to whom a request for scoping information was made and the consultation bodies, and take into account -

(i) the specific characteristics of the particular ROMP development;

(ii) the specific characteristics of development of the type concerned;

(iii) the environmental features likely to be affected by the ROMP development; and

(iv) the extent to which the information may reasonably be required to be compiled having regard, in particular, to current knowledge and methods of assessment.

126. The attention of mpas, and of consultation bodies for their part in assisting the mpa in coming to its scoping decision, is drawn in particular to the matter at sub-paragraph (d) above, which requires objective consideration to be given to the question of whether the information can reasonably be required to be compiled.

127. **Step 2.2: notification of scoping decisions – action by mpas and the Welsh Ministers**: For cases where a screening direction is not requested under regulation 10(2), the Regulations require mpas to adopt a scoping opinion, and to send a copy of that opinion to the applicant, within six weeks of the date on which the mpa has sufficient information to be able to do so. If an mpa has sufficient information to adopt a scoping opinion on the date on which the Regulations come into force, the six week period will run from that date. If an mpa requires additional information in order to be in a position to adopt a scoping opinion, the six week period will run from the date on which it receives that scoping information. In cases where an applicant exercises the right to request a screening direction within three weeks of the Regulations coming into force, the mpa will be required to adopt a scoping opinion within six weeks of receipt of a copy of a positive screening direction from the Welsh Ministers in cases where the mpa has sufficient information to enable it to do so. If an mpa requires additional information in order to be in a position to adopt a scoping opinion in such cases, the six week period will run from the date on which it receives that information.

128. Where a case is before the Welsh Ministers for determination and the Welsh Ministers have sufficient information to be able to do so, a scoping direction must be made, and a copy of that direction sent to the applicant or appellant, as soon as reasonably practicable following the date on which the Regulations come into force or, if an applicant or appellant has requested a screening direction under regulation 10(2), within six weeks of having made a positive screening direction. If the Welsh Ministers do not have sufficient information to make a scoping direction, they must make that direction as soon as reasonably practicable following receipt of that information.

129. Where a stalled review application is referred to the Welsh Ministers on or after the date on which the Regulations come into force at a time when no scoping opinion or direction has been notified to the applicant in connection with the application in question[10] the Welsh Ministers must make a scoping direction, and send a copy of that direction to the applicant and to the relevant mpa, as soon as reasonably practicable after the stalled review application is referred to them or, if scoping information is requested, as soon as reasonably practicable following receipt of that scoping information.

130. It is important that scoping decisions are clear and detailed so that applicants and appellants are fully aware of the information which is required so as to prevent the need for repeated requests for further information at later stages.

131. Once a scoping decision has been made, mpas and the Welsh Ministers must send a copy of that decision to the applicant or appellant and to the consultation bodies. In accordance with the approach outlined at paragraph 76 above, mpas and the Welsh Ministers must, at the same time, notify applicants and appellants of the next procedural steps required to be taken by them, and by the relevant mpa or the Welsh Ministers, along with the consequences which will flow from non-compliance with the requirements of the Regulations. These notifications must include the relevant matters referred to in Schedule 3 paragraphs 5 or 9 respectively which, broadly speaking, will comprise the following information:

(i) the date by which the ES must be provided;

(ii) that the ES must include all of the information identified in the relevant scoping decision;

(iii) that if the ES is not provided by the date it is due, minerals development will be automatically suspended;

(iv) that the applicant or appellant is entitled to make use of the procedure under regulation 16 to facilitate the preparation of the ES required; and details of the procedure concerned;

(v) that the adoption of a scoping opinion by an mpa, or the making of a scoping direction by the Welsh Ministers, does not preclude the mpa or the Welsh Ministers from requiring the applicant or appellant or a relevant operator to provide further information under regulation 26 or evidence under regulation 27;

[10] That is, where the mpa has not notified the applicant of its scoping opinion under regulation 11(7), and the Welsh Ministers have not made a scoping direction in response to a request by the applicant under regulation 11(8) (failure of MPA to adopt and notify its scoping opinion).

(vi) that on receipt of the ES in question, the mpa or the Welsh Ministers will be required to assess whether the ES includes all of the information identified in the relevant scoping decision, and whether the ES is presented in an inappropriate form;

(vii) that if the applicant or appellant or a relevant operator requested to provide information which was identified in the relevant scoping decision, but which does not appear to be included in the ES; or if the applicant or appellant is required to re-submit the ES in an altered form, failure to provide the information, or failure to re-submit the ES incorporating the changes identified, within the period allowed for doing so, will result in the automatic suspension of minerals development;

(viii) that an automatic suspension of minerals development will remain in effect until every requirement imposed by or under the Regulations has been complied with; not only the requirement which gives rise to a suspension, but all subsequent requirements also;

(ix) that if minerals development remains suspended for a period of two years and any of the steps which are required to be taken by the applicant under the provisions mentioned in regulation 48(3) have yet to be taken, the mpa will be required to consider whether to make a prohibition order under Schedule 9 to the Act with respect to the ROMP development in question; and that for the purposes of that duty-

- a prohibition order may be made in relation to part of a site (in addition to the whole of a site);

- an mpa must assume that minerals development has permanently ceased where minerals development has been suspended for a period of two years and it appears to the authority that resumption of minerals development to any substantial extent is unlikely;

- an mpa must disregard minerals development which is suspended when considering the preceding question, such that that the question to be addressed is whether it appears to the authority that the resumption of authorised minerals development to any substantial extent is unlikely; and

- that a confirmed prohibition order can have effect to terminate planning permission for part of the minerals development to which it originally extended.

(x) that if the mpa or the Welsh Ministers instruct the applicant to publish notice of the application and the availability of an ES for inspection-

- the giving of that notice will not preclude the mpa or the Welsh Ministers from requiring the applicant or appellant or a relevant operator to provide further information under regulation 26 or evidence under regulation 27;

- that the applicant or appellant will be required by virtue of regulation 24, to ensure that a reasonable number of copies of the ES are available at the address named in the notices which will be

published or posted by the applicant or appellant under regulation 20, as being the address at which copies may be obtained;

- that the applicant or appellant will be required by regulation 22(1) to provide to the relevant mpa or, as the case may be, to the Welsh Ministers, such number of copies of the ES as is specified in the notice, within seven days of the date on which the notice is given;

(xi) that the applicant or appellant is required to publicise the written notification by site notice, and an explanation of the requirements imposed in that respect by regulation 46;

(xii) the right to challenge the scoping decision and the time period for doing so.

132. Mpas are required to take such steps as they consider most likely to bring to the attention of persons likely to be interested in the application, any scoping opinion sent to an applicant, and the written notification which accompanies it. The Welsh Ministers are required to do the same in relation to any scoping direction sent by them to an applicant or appellant, and in relation to the written notification which accompanies the direction. The mpa is also required to place a copy of the opinion or direction, and accompanying written notification on the register.

133. **Step 2.3: Receiving a scoping decision – action by applicants and appellants**: The applicant or appellant must post a copy of the scoping opinion or direction received by it, and the written notification which accompanied the opinion or direction on the land within 14 days of the date of the opinion or direction, and must leave it in place for a period of at least 14 days. The copy must be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land. The obligation to post a site notice does not apply if an applicant or appellant does not have, and is not reasonably able to acquire, the rights required to comply with that obligation.

Steps 1.A and 2.A: Scoping directions made at request of applicant where mpa has failed to notify scoping opinion within the relevant eight week period

134. If a relevant mpa fails to notify an applicant of its scoping opinion within the relevant six week period, an applicant can request the Welsh Ministers to make a scoping direction.

135. **Step 1.1A: Making a request for a scoping direction – action by applicants**: Where an applicant requests the Welsh Ministers to make a scoping direction, that request must be accompanied by the information and documents specified in regulation 13(1), that is:

(i) a plan sufficient to identify the land;
(ii) a brief description of the nature and purpose of the development and of its possible effects on the environment;
(iii) a copy of any request for scoping information, including the notification required to accompany that request, which was made by the relevant mpa under regulation 12(2);

(iv) a copy of any screening direction made by the Welsh Ministers and accompanying statement of reasons;
(v) such other information or representations as the applicant may wish to provide or make.

136. The applicant must send a copy of the request to the mpa, along with a copy of any information or representations which the applicant provides or makes to the Welsh Ministers under regulation 13(1)(e).

137. It may be the case that on receiving the information and documentation which is required to accompany a request for a scoping direction made under regulation 12(9), the Welsh Ministers may have sufficient information to make a scoping direction. If this is the case, the Welsh Ministers will proceed to Step 2A.

138. **Step 1.2A : Requesting scoping information – action by the Welsh Ministers**: If the Welsh Ministers consider that they have insufficient information to be able to make a scoping direction in response to a request made to them under regulation 12(9), the Welsh Ministers must notify the applicant or an relevant operator, of the scoping information which they require in order to be in a position to make the direction. The Welsh Ministers must give this notification as soon as reasonably practicable following receipt of the request from the applicant, and that notification must include the matters set out in paragraph 7 of Schedule 3 (summarised at paragraph 105 above). The Welsh Ministers may also request the relevant mpa to provide such information as it can which is relevant to the scoping information requested of the applicant or relevant operator.

139. A request for scoping information may be withdrawn at any time between the issuing of the notification and the deadline for submission of the information.

140. Mpas and the Welsh Ministers must take such steps (other than posting site notices) as they consider most likely to bring the request and the written notification to the attention of persons likely to be interested in the EIA application. The mpa is also required to place a copy of the notification on the register.

141. **Step 1.3A: Receiving a request for scoping information – action by applicants and operators**: An applicant or operator who receives a written notification requesting scoping information must take action in two respects – post a site notice, and provide the information requested.

142. With respect to the posting of a site notice, the applicant or operator must post a copy of the written notification received on the land within 14 days of the date of the notification, and must leave it in place for a period of at least 14 days. The copy must be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land. The obligation to post a site notice does not apply if an applicant or operator does not have, and is not reasonably able to acquire, the rights required to comply with that obligation.

143. Scoping information must be provided within three weeks of the date on which the notice requesting the scoping information is given by the Welsh Ministers, unless an extension to the three week period has been agreed in writing with the Welsh Ministers. For cases where an extension of time is not agreed with the Welsh Ministers, applicants should note in particular that the three week period runs from the date on which the notice is *given* by the Welsh Ministers – not the date on which the notice is received by the applicant or operator. The Welsh Ministers

may consider agreeing to an extension of time for provision of scoping information where, in all the circumstances of the particular case in question, it would be unreasonable to require an applicant or operator to provide the scoping information requested within a three week period. If an extension has been agreed in writing, the scoping information must be provided by the date on which the extended period ends. If the scoping information is not provided by the applicant or appellant by the date it is due, minerals development will be suspended (apart from restoration and aftercare conditions) until the until every requirement imposed by or under the Regulations has been complied with.

144. Provision of information by mpas: If the Welsh Ministers request an mpa to provide information pertaining to the scoping information request made to the applicant or operator, the mpa must provide that information, or the reasons for being unable to provide information, to the Welsh Ministers within three weeks of the date of that request, unless an extension has been agreed in writing with the Welsh Ministers. This provision in the Regulations is identical to that explained at paragraph 99 above in relation to screening, and is included in the Regulations for the same reasons.

145. **Step 2A: Making a Scoping Direction**: A scoping direction must be made as soon as reasonably practicable following receipt of the request or, where scoping information has been requested, as soon as reasonably practicable following receipt of the scoping information in question.

146. **Step 2.1A: consultation prior to making scoping direction - action by the Welsh Ministers**: Before making a scoping direction the Welsh Ministers must consult the applicant, ay relevant operator and the consultation bodies, and take into account those matters set out in regulation 13(12)(a) to(d)[11].

147. **Step 2.2A: notification of scoping directions – action by the Welsh Ministers** Once a decision is made, the Welsh Ministers must send a copy of the direction to the applicant, and a copy to the mpa and to the consultation bodies. The Welsh Ministers must, at the same time, give written notification to the applicant of the right to challenge the scoping direction and the timescales for making such a challenge.

148. The Welsh Ministers are required to take such steps (other than posting a site notice) as they consider most likely to bring the scoping direction and the written notification which accompanies it to the attention of persons likely to be interested in the application.

149. **Step 2.3A: notification to be given to applicant – action by mpas**: The relevant mpa must, within seven days of receiving a copy of the scoping direction, notify the applicant of the matters set out in paragraph 6 of Schedule 3 (summarised at paragraph 118 above). That notification is not required to include an explanation of the applicant's right to challenge the scoping direction, because that information is required to accompany the copy of the scoping direction sent to the applicant by the Welsh Ministers by virtue of regulation 13(13).

150. The relevant mpa must take such steps (other than posting a site notice) as they consider most likely to bring the scoping direction, the written notification which accompanies it, and the written notification which the mpa gives to the applicant,

[11] Cross-ref to footnote 13;

to the attention of persons likely to be interested in the application. The relevant mpa must also place copies of the direction and notifications on the register.

151. **Step 2.4.A: receiving a scoping direction – action by applicants**: An applicant or appellant who receives a copy of a scoping direction and associated written notifications must post a copy of the direction and the written notifications received on the land within 14 days of the date of the notification, and must leave them in place for a period of at least 14 days. The copies must be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land. The obligation to post a site notice does not apply if an applicant or appellant does not have, and is not reasonably able to acquire, the rights required to comply with that obligation.

Scoping directions where application referred to the Welsh Ministers prior to scoping decision being notified to the applicant:

152. Where an application is referred to the Welsh Ministers on or after the date on which the Regulations come into force in a case where no scoping decision has yet been notified to the applicant (whether by the relevant mpa under regulation 12(8), or by the Welsh Ministers under regulation 13(12)), the Welsh Ministers must make a scoping direction as soon as reasonably practicable following the application being so referred, unless the Welsh Ministers have insufficient information to be able to do so. If the Welsh Ministers require scoping information, Steps 1.1A to 1.3A will apply, and the scoping direction must be made as soon as reasonably practicable following receipt of the scoping information in question.

Scoping directions where application referred to the Welsh Ministers after scoping decision is notified to applicant, but before applicant is given instruction to publish ES

153. In cases where an application is referred to the Welsh Ministers after a scoping decision has been notified to the applicant, but before the applicant is instructed to publish the ES, the Regulations permit the Welsh Ministers to make a scoping direction and to substitute that direction for the scoping opinion notified to the applicant by the relevant mpa or the scoping direction notified to the applicant under regulation 13(12), if they consider it expedient to do so. If it is the case that the Welsh Ministers consider it expedient to make a substitute scoping direction, the Regulations require the Welsh Ministers to do so as soon as reasonably practicable following the application being referred to them for determination. The Welsh Ministers anticipate that they may consider it expedient to make a substitute scoping direction in cases where for example, on the evidence available to them at the time they make the direction, they consider the scoping opinion adopted by the mpa to be inadequate in any material respect. The procedures for making a substitute scoping direction are broadly the same as those for making a scoping direction under regulation 14 and consequently, Steps 1.1A to 1.3A will apply in these cases also; as will the duties of mpas and the Welsh Ministers to bring any requests for scoping information, the direction and the written notification which accompanies it, to the attention of persons likely to be interested in the application, and the duty on applicants and appellants and, in some cases, operators, to post the corresponding site notices.

Fig 2: Summary - Scoping decisions for cases before mpas

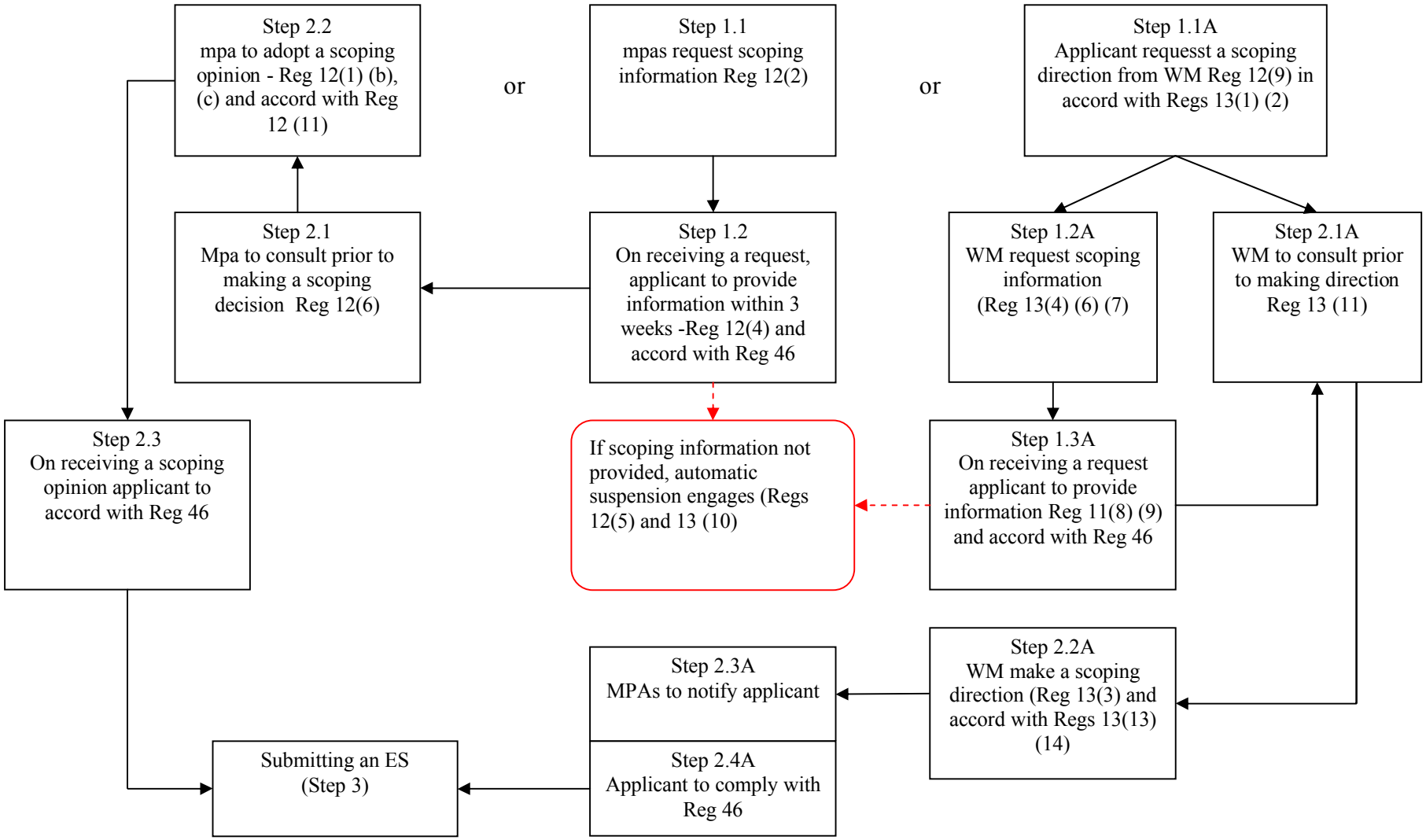
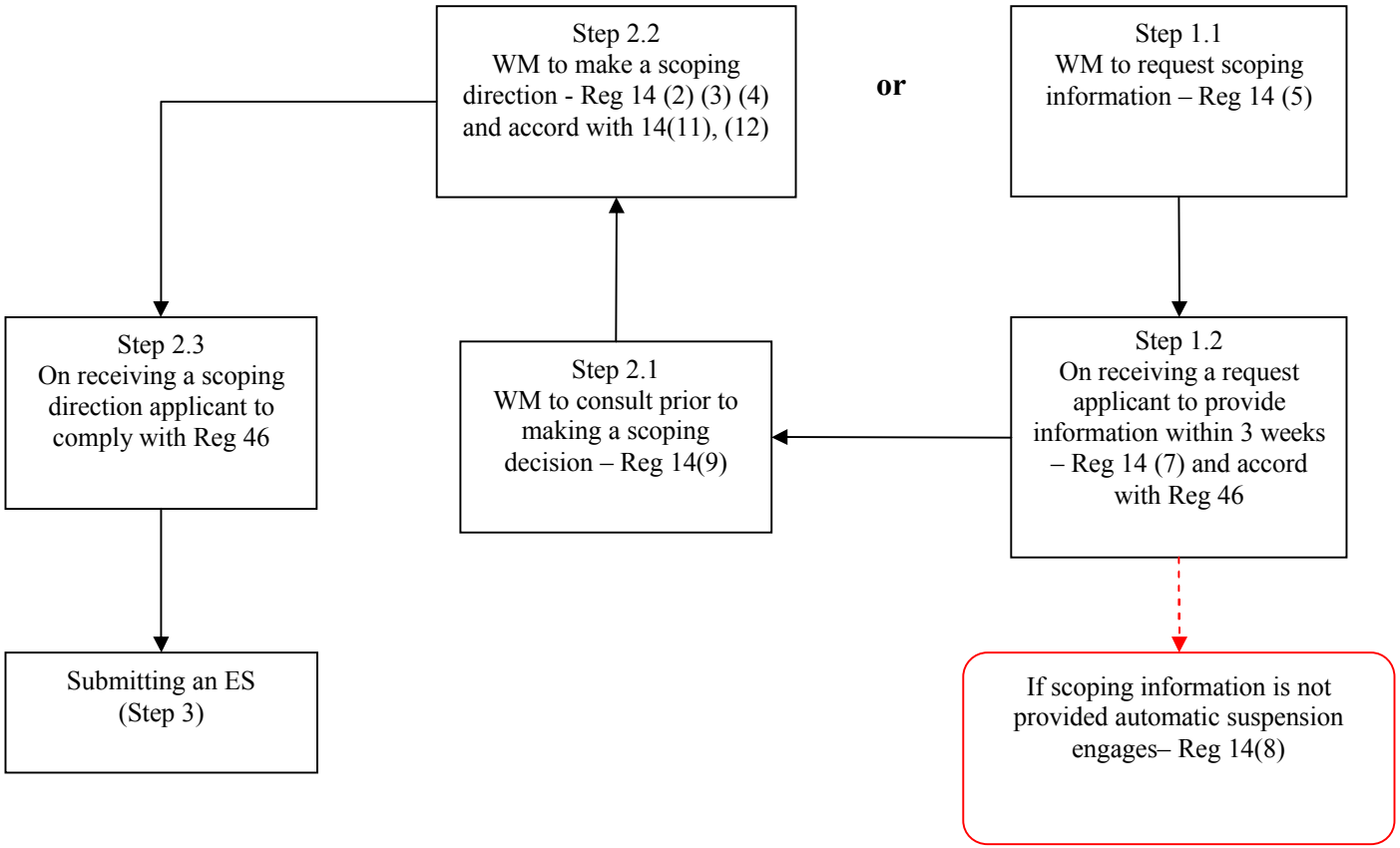


Fig 3: Summary - Scoping decisions for cases before Welsh Ministers (WMs)



Facilitating the preparation of an ES

154. The Regulations do not impose an obligation on applicants or appellants to consult anyone prior to submitting a draft ES, but mpas and the consultation bodies may have in their possession, information which is both relevant and useful to those tasked with preparing ESs. Regulation 16 is designed to assist those preparing ESs to obtain the assistance of mpas and the consultation bodies in this respect.

155. Regulation 16 supplements the Environmental Information Regulations 1992[12] (EIR) in cases where an applicant or appellant is required to prepare an ES and provides a facility designed to assist applicants and appellants with that task. Once invoked, this regulation requires the relevant mpa or the consultation bodies to enter into consultation with the applicant or appellant with a view to establishing whether the mpa or any of those bodies have in their possession, information relevant to the preparation of an ES; if they do, regulation 16 requires the mpa and the consultation body (or bodies) to make that information available to the applicant or appellant preparing the ES.

156. Securing assistance from the relevant mpa: It will usually be helpful to applicants and appellants preparing ESs to obtain assistance from the relevant mpa. Local planning authorities will often possess useful local and specialised information and may be able to give preliminary advice on those aspects of the ROMP development that are likely to be of particular concern to the authority.

157. Applicants and appellants are entitled by regulation 16(1) to request the relevant mpa to enter into consultation to determine whether the mpa has in its possession any information which the applicant or appellant or the authority considers relevant to the preparation of the ES. The Regulations do not impose a deadline by which the applicant or appellant must make a request, but applicants and appellants are advised to bear in mind the deadline for submission of the draft ES and the fact that it may take time to determine whether an mpas has relevant information in its possession. Applicants and appellants should also note that an mpa which makes information available under the regulation 16 procedure is entitled to make a reasonable charge for doing so.

158. If an mpa receives a request from an applicant or appellant, the mpa is required to enter into consultation with the applicant or appellant in order to determine whether the mpa holds any information relevant to the preparation of the ES and if it has, the mpa is required to make it available to the applicant or appellant. Mpas should note that the question of whether information is to be considered relevant to the preparation of any particular ES is not one for the mpa alone, regulation 16(1) provides that that determination rests severally with the mpa and with the applicant or appellant. This means that in cases where, for example, an applicant or appellant considers information held by the mpa to be relevant to the preparation of the ES, but the mpa does not, regulation 16(1) will require the MPA to make that information available to the applicant or appellant nevertheless, subject to the exception mentioned below.

[12] Under the EIR, public bodies must make environmental information available to any person who requests it. The regulations can be found at http://www.opsi.gov.uk/si/si2004/20043391.htm

159. Regulation 16(1) requires an mpa to provide information already in its possession. There is no obligation imposed on mpas to undertake research or otherwise to take steps to obtain information which they do not already have. Nor is there any obligation to make available information which is capable of being treated as confidential under the Environmental Information Regulations 1992. mpas may make a reasonable charge reflecting the cost of making available information requested by an applicant or appellant.

160. The obligations imposed by regulation 16(1) do not displace the obligations imposed by the EIR. Further information in connection with the EIR can be found on the Information Commissioner's website: www.ico.gov.uk.

161. Securing assistance from consultation bodies: It will usually be helpful to an applicant or appellant preparing an ES to obtain information from the consultation bodies. Regulation 16 is designed to assist applicants and appellants to do so.

162. To do this an applicant or appellant who has received a copy of a scoping decision under regulation 12(8)[13], 13(12)[14], 14(11)[15] or 15(11)[16] may invoke regulation 15 by giving written notice to the relevant mpa or, where the case is before the Welsh Ministers for determination, to the Welsh Ministers, requesting that the consultation bodies be notified that they should enter into consultation with the applicant or appellant and make relevant information available if requested to do by the applicant. The written notice must include the following –

(a) the information necessary to identify the land;

(b) the information necessary to identify the nature and purpose of the ROMP development;

(c) by reference to the scoping decision an indication of the main environmental consequences to which the applicant or appellant proposes to refer to in the ES.

163. Applicants and appellants should note that the effect of the notice to be given to the consultation bodies by the relevant mpa or the Welsh Ministers, is not to require the consultation bodies to enter into consultation with the applicant or appellant, nor to make relevant information available; but to require the consultation bodies do so *if requested by the applicant or appellant.* This means that applicants and appellants wishing to make use of the regulation 16 procedure will need to follow up a notice to the relevant mpa or the Welsh Ministers, with a request to the consultation bodies for assistance.

164. The Regulations do not impose a deadline by which applicants and appellants must notify the relevant mpa or the Welsh Ministers under regulation 16(2), but applicants and appellants are advised to bear in mind the deadline for submission of the draft ES and the fact that it may take time to determine whether or not a consultation body it has in its possession any relevant

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13 Scoping opinion adopted by relevant mpa.

14 Scoping direction made by the Welsh Ministers in response to a request in that behalf by an applicant where relevant mpa has not sent a copy of its scoping opinion to the applicant within the relevant six week period.

15 Scoping direction made by the Welsh Ministers for cases referred or appealed to them.

16 Substitute scoping direction made by the Welsh Ministers where case referred them.

information. Applicants and appellants should also note that a consultation body which makes information available under the regulation 16 procedure is entitled to make a reasonable charge for doing so.

165. If an mpa or the Welsh Ministers receive a written notice under regulation 16(2), they must notify the consultation bodies in writing of the name and address of the person who is required to submit an ES, and the written notice must inform the consultation bodies in question, of the obligation to make information available. The mpa or the Welsh Ministers must also notify the applicant or appellant in writing of the names and addresses of the consultation bodies which they have notified.

166. If a consultation body receives written notification from an mpa or the Welsh Ministers under regulation 16(4), the consultation body is obliged - if requested by an applicant or appellant - to enter into consultation in order to determine whether it holds any information relevant to the preparation of the ES and if it has, the consultation body is required to make that information available to the applicant or appellant. Consultation bodies should note that the question of whether information is to be considered relevant to the preparation of any particular ES is not one for the consultation body alone, regulation 16(4) provides that that determination rests severally with the consultation body and with the applicant or appellant. This means that in cases where, for example, an applicant or appellant considers information held by a consultation body to be relevant to the preparation of the ES, but the consultation body does not, regulation 16(4) will require the consultation body to make that information available to the applicant or appellant nevertheless, subject to the exception provided by regulation 16(5).

167. Consultation bodies are required to provide information already in their possession. There is no obligation imposed on consultation bodies to undertake research or otherwise to take steps to obtain information which they do not already have. Nor is there any obligation to make available information which is capable of being treated as confidential under the EIR. Consultation bodies may make a reasonable charge reflecting the cost of making available information requested by an applicant or appellant.

168. The obligations imposed by regulation 16(4) do not displace the obligations imposed by the EIR.

Submitting Environmental Statements

Step 3: Submission Procedure

169. The Regulations introduce a two stage approach for submitting and consulting on Environmental Statements which is designed to secure that an ES which is fit for purpose is produced for every stalled review which is subject to the EIA procedure. The two staged approach principally comprises –

- the submission procedure (step 3) - to subject a draft ES to scrutiny prior to publication for consultation, to ensure that it includes sufficient information in an appropriately accessible form for consultation purposes; and

- the publishing procedure (steps 4, 5 and 6) - to ensure that interested parties have access to an ES which is fit for the purposes of consultation and any further environmental information needed to determine the ROMP development.

170. Together these procedures establish the framework for preparing and consulting on an ES, with the rationale of avoiding the expense of the advertisement of, and consultation on, an inadequate ES, and avoiding the fragmented presentation of information with a view to promoting transparency and effective public participation.

171. **Step 3.1: requirement to submit draft ES – action by applicants and appellants**: In all cases of EIA development a draft ES must be submitted. The notification which accompanied the relevant scoping decision sent to an applicant or appellant in any particular case, will have specified the date by which the draft ES is to be submitted. The starting point is that a draft ES must be submitted by the applicant or appellant within 16 weeks of the date on which the relevant scoping decision was notified by the relevant mpa or the Welsh Ministers. The 16 week period can be extended by agreement in writing with the relevant mpa or the Welsh Ministers. The Welsh Ministers are concerned to secure the expeditious determination of all stalled reviews and consequently would not expect the 16 week period to be extended to facilitate avoidable or unreasonable delays. When considering whether to agree to extend the 16 week period, the Welsh Ministers consider that it would be reasonable to take account of any time needed to secure information from third parties. The Welsh Ministers also consider that it may be reasonable for the 16 week period to be extended, for example, where:

- there have been, or are planned to be, major changes since the application was submitted to the way minerals are won and worked or mineral waste is deposited on the site; and the effects of those changes on the environment need to be assessed; or

- if species surveys need to be carried out which can only be conducted at certain times of the year

172. It is considered by Welsh Ministers to be unlikely that an extension to the 16 week period should exceed 15 months other than in exceptional circumstances.

173. Where an extension of time has not been agreed with the relevant mpa or the Welsh Ministers, applicants and appellants should note in particular that the 16 week period will run from date on which the relevant scoping decision is *notified* – not the date on which the notification is received by an applicant or appellant.

174. Applicants should also note that where an application is referred to the Welsh Ministers after the applicant has been notified of the relevant scoping decision, but before the draft ES is submitted to the relevant mpa, regulation 17(4) requires that that the draft ES is submitted to the Welsh Ministers – not to the relevant mpa.

175. If a draft ES is not submitted within the 16 week period (for cases where an extension is not agreed), or is not submitted within any extended period agreed in writing with the relevant mpa or the Welsh Ministers, minerals

development is automatically suspended from the end date of the period in question until the until every requirement imposed by or under the Regulations has been complied with.

176. On receipt of a draft ES mpas and the Welsh Ministers are required to carry out pre-consultation checks on the draft ES: Once received, a draft ES will be subject to a two stage pre-consultation check to ensure that it is fit for the purposes of consultation and public participation. For the purposes of these Regulations, an ES is defined as a statement which:-

- is presented in an appropriate form;
- includes at least the information referred to in part II of Schedule 2; and,
- includes the information specified in the relevant scoping decision.

177. Therefore, as part of the pre-consultation check, mpas and the Welsh Ministers will be considering –

- firstly, whether the draft ES appears to contain all of the information specified in the relevant scoping decision; and,
- secondly, whether the form in which the draft ES is presented constitutes a reasonably coherent and accessible document or set of documents.

178. Within three weeks of a draft ES being submitted, an mpa must take one of three possible courses of action. The attention of mpas is drawn to the fact that there is no discretion available to mpas to extend the three week period for compliance with this requirement and consequently, if an mpa reasonably concludes that it will be unable to comply with this requirement within the three week period, it may wish to make use of the procedure under regulation 5 to request an extension of time from the Welsh Ministers. The Welsh Ministers are also required to take one of the three course of action in question within such period as they may reasonably require following receipt of a draft ES. The three possible course of action are: –

(a) if the mpa or the Welsh Ministers consider that the content or extent of the information included in a draft ES is materially inconsistent with the relevant scoping decision, the mpa or, as the case may be, the Welsh Ministers, must clearly and precisely identify to the applicant or appellant, or to a relevant operator, the material inconsistency in question and the information which is necessary to remedy the inconsistency and give written notification of the matters set out in paragraph 12 of Schedule 3;

(b) if the mpa or the Welsh Ministers consider that the draft ES appears to contain all of the information specified in the relevant scoping decision, but reasonably consider that it is presented in an inappropriate form, the mpa or, as the case may be, the Welsh Ministers must notify the applicant or appellant of the changes which are required to be made to the form in which the draft ES is presented and give written notification to the applicant or appellant, of the matters set out in paragraph 13 of Schedule 3;

(c) if the mpa or the Welsh Ministers are satisfied that the draft ES appears to contain all of the information specified in the relevant scoping decision and that it is not presented in an inappropriate form, the mpa or the Welsh

Ministers must, in writing, give notice to applicant or appellant to publish details of the application and the availability of the ES in accordance with regulation 20; give written notification of the matters set out in regulation 18(22), and of those set out in paragraph 14 of Schedule 3. Because the draft ES now meets the threshold set by the manner in which "environmental statement" is defined, the draft ES is now an "environmental statement" for the purposes of the Regulations and consequently, the applicant or appellant has complied with the duty to submit an ES which is imposed by regulation 17(1).

179. The pre-consultation check comprises two stages. The first stage concerns the contents of the draft ES, the second stage concerns the form in which the draft ES is presented.

180. **Step 3.2 pre-consultation check for contents of draft ES – action by mpas and the Welsh Ministers:** The Regulations require mpas and the Welsh Ministers to consider whether the content and extent of the draft ES *appears* to be consistent with the relevant scoping decision. The Regulations have been drafted in this way because the question is primarily designed to address the breadth of the information contained in the draft ES and whether the information concerned is of insufficient depth to permit meaningful consultation to take place in relation to it.

181. This means that mpas and the Welsh Ministers will be required at this stage to actively assess the contents of the draft ES against the contents of the relevant scoping decision; and to consider whether any of the information in question is materially inconsistent with the scoping decision. It is not the purpose of the pre-consultation check to comprehensively assess the information contained in the draft ES in order to determine whether it is sufficient to permit the assessment of the likely environmental effects of the ROMP development, nor to re-consider whether the draft ES should contain information other than that which was specified in the relevant scoping decision. Those questions will be addressed through the consultation exercise to be carried out in respect of the ES, and as a result of the consideration which mpas and the Welsh Ministers will give to the ES, any further information, any evidence, any other information, any representations made by any body required by the Regulations to be invited to make representations and any representations duly made by any other person about the environmental effects of the ROMP development in question.

182. It is important to note in this respect, that the ES which is eventually published for consultation is not the end point of the EIA procedure but a step, albeit a significant one, on the way to identifying, and bringing together, all of the information which is reasonably required to assess the likely environmental effects of the ROMP development in question. This is because it may not be apparent until after consultation has taken place that information which is referred to in Part 1 of Schedule 2 but which was not identified in the relevant scoping decision, is in fact reasonably required in order to assess the likely environmental effects of the ROMP development in question.

183. **Step 3.2.(a): If the content and extent of the draft ES pass the pre-consultation check – action for mpas and the Welsh Ministers to consider the form of the draft ES**: If, having considered the content and extent of the information contained in the draft ES mpas or the Welsh Ministers are satisfied that it appears to be consistent with the information

identified in the relevant scoping decision, the Regulations require mpas and the Welsh Ministers to consider whether the draft ES is presented in an inappropriate form. In theses cases, mpas and the Welsh Ministers will proceed to Step 3.3.

184. **Step 3.2.(b): If the content or extent of the draft ES does not pass the pre-consultation check – action for mpas and the Welsh Ministers to request specified information** : If mpas or the Welsh Ministers consider that either the content or extent of the draft ES is materially inconsistent with the relevant scoping decision, they must give written notification to the applicant, appellant or relevant operator(s), identifying clearly and precisely the material inconsistency in question and the information which is necessary to remedy the inconsistency and of the matters specified in paragraph 12 of Schedule 3.

185. The question of whether the written notification should be given to the applicant or appellant, or to an operator who is not the applicant or appellant, will depend on the nature of the information which is required in any particular case. Because the relevant scoping decision will have specified the information required to assess the likely environmental effects of all of the ROMP development authorised by the permission(s) which is the subject of the application, it is likely that in cases where there are operators other than the applicant or appellant carrying out minerals development under authority of the permission(s) in question, that at least some of the information specified in the relevant scoping decision can only be provided by the operator(s) who is not the applicant or appellant. In cases such as these, where the information which is required to remedy the inconsistency between the draft ES and the relevant scoping decision can only be provided by a non-applicant operator, the written notification should be given to the operator in question.

186. Mpas must comply with this duty within three weeks of having received a draft ES. The attention of mpas is drawn to the fact that there is no discretion available to mpas to extend the three week period for compliance with this requirement and consequently, if an mpa reasonably concludes that it will be unable to comply with this requirement within the three week period, it may wish to make use of the procedure under regulation 5 to request an extension of time from the Welsh Ministers.

187. The Welsh Ministers are required to comply with this requirement within such period as they may reasonably require following receipt of a draft ES. The notifications should, with clarity and precision, identify the material inconsistency between the draft ES and the relevant scoping decision and the information which is required to remedy that inconsistency and, broadly speaking, must include the following information:

(i) the date by which the specified information must be provided;

(ii) that if the specified information is not provided by the date specified, minerals development will automatically be suspended, apart from restoration and aftercare conditions;

(iii) that once the mpa or the Welsh Ministers are satisfied that the draft ES includes all of the information specified in the relevant scoping decision, the mpa or the Welsh Ministers will be required to consider whether the draft ES is presented in an inappropriate form;

(iv) that if changes are required to be made to the form in which the ES is presented as a result of a notification given under regulation 18(14), failure to submit the draft ES incorporating the required changes within the period allowed for doing so, minerals development will automatically be suspended, apart from restoration and aftercare conditions;

(v) that an automatic suspension of minerals development will remain in effect until every requirement imposed by or under the Regulations has been complied with; not only the requirement which gives rise to a suspension, but all subsequent requirements also;

(vi) that if minerals development remains suspended for a period of two years and any of the steps which are required to be taken under the provisions mentioned in regulation 48(3) have yet to be taken, the mpa will be required to consider whether to make a prohibition order under Schedule 9 to the Act with respect to the ROMP development in question; and that for the purposes of that duty-

- a prohibition order may be made in relation to part of a site (in addition to the whole of a site);

- an mpa must assume that minerals development has permanently ceased where minerals development has been suspended for a period of two years and it appears to the authority that resumption of minerals development to any substantial extent is unlikely;

- an mpa must disregard minerals development which is suspended when considering the preceding question, such that that the question to be addressed is whether it appears to the authority that the resumption of authorised minerals development to any substantial extent is unlikely; and

- that a confirmed prohibition order can have effect to terminate planning permission for part of the minerals development to which it originally extended.

(vii) that once the mpa or the Welsh Ministers are satisfied that the draft ES includes all of the information specified in the relevant scoping decision and that it is not in an inappropriate form, the applicant or appellant will be instructed to publish notice of the application and the ES in accordance with the requirements of regulation 20; and will be given written notification of the matters specified in regulation 18(22), and an explanation of what those matters are;

(viii) that in the event that the mpa or the Welsh Ministers instruct the applicant or appellant to publish notice of the application and ES-

- the giving of that notice will not preclude the mpa or the Welsh Ministers from requiring the applicant or appellant or a relevant operator to provide further information under regulation 26 or evidence under regulation 27;

- that the applicant or appellant will be required by virtue of regulation 24, to ensure that a reasonable number of copies of the ES are available at the address named in the notices which will be published or posted by the applicant or appellant under regulation 20, as being the address at which copies may be obtained;

- that the applicant or appellant will be required by regulation 22(1) to provide to the relevant mpa or, as the case may be, to the Welsh Ministers, such number of copies of the ES as is specified in the notice, within seven days of the date on which the notice is given;

- that regulation 19 will require the applicant or appellant to submit the documentary evidence of publication specified in regulation 21 within six weeks of the date on which the instruction to publish is given, unless otherwise agreed in writing with the relevant mpa or the Welsh Ministers;

- that a failure to submit the documentary evidence of publication within the timer period allowed for doing so will result in the automatic suspension of minerals development;

- that an instruction to publish will not preclude the mpa or the Welsh Ministers from requiring the applicant or appellant or a relevant operator to provide further information under regulation 26 or evidence under regulation 27;

- the right to challenge the notification and the time period for doing so.

(ix) that the applicant or appellant is required to publicise the written notification by site notice, and an explanation of the requirements imposed in that respect by regulation 46;

(x) the right to challenge the scoping decision and the time period for doing so.

188. The Regulations do not restrict the number of times an mpa or the Welsh Ministers can require an applicant or appellant to provide information which is missing from a draft ES. The Regulations are drafted in this way because it may be the case that once the specified information is provided, it becomes clear that that information is itself inadequate or obviously deficient; or that, having notified an applicant or appellant of the information which is missing, the mpa or the Welsh Ministers conclude that information which was not included in the notification previously sent under regulation 18(6) is also missing or obviously deficient. With respect to this latter point, the Welsh Ministers do not expect the power to give more than one notification to be used as a substitute for the active assessment of the information contained in the draft ES against that specified in the relevant scoping decision, to check if the content or extent of that information is materially inconsistent with the scoping decision.

189. A request for scoping information may be withdrawn at any time between the issuing of the notification and the deadline for submission of the information

190. Mpas and the Welsh Ministers must take such steps (other than posting site notices) as they consider most likely to bring any request for specified information and the accompanying written notification to the attention of persons likely to be interested in the application. Mpas must place a copy of any request and notification on the register.

191. **Step 3.2.(c): Receiving a request for specified information – action for applicants, appellants and operators**: If an applicant or appellant or an operator receives a request for specified information, the applicant or appellant or operator must take action in two respects – post a site notice, and provide the information requested.

192. The applicant or appellant or operator must post a copy of the request and of the written notification received, on the land within 14 days of the date of the notification, and must leave it in place for a period of at least 14 days. The copy must be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land. The obligation to post a site notice does not apply if an applicant or appellant or operator does not have, and is not reasonably able to acquire, the rights required to comply with that obligation.

193. The applicant or appellant or operator must provide the information specified in the notice by the end of the three week period which begins with the date on which the notice requesting the specified information is given, unless an extension to the three week period has been agreed in writing with the mpa or the Welsh Ministers. The Welsh Ministers would not expect the period to be extended by agreement in order to facilitate avoidable or unreasonable delays, but to be used sparingly where, in all the circumstances of the particular case in question, the specified information requested cannot reasonably be required to be provided within the three week period.

194. Applicants, appellants and operators should note in particular here, that in cases where an extension of time has not been agreed, the three week period runs from the date on which the notice is *given* by the mpa or the Welsh Ministers – not the date on which the notice is received by the applicant. In those cases where an extension has been agreed in writing, the specified information must be provided by the date on which the extended period ends. If the specified information is not provided by the date it is due, minerals development will be suspended (apart from restoration and aftercare conditions) until the until every requirement imposed by or under the Regulations has been complied with.

195. Applicants and operators should also note that where an application has been referred to the Welsh Ministers after a notice has been given by the relevant mpa, but before the specified information is provided, the information must be provided to the Welsh Ministers – not to the relevant mpa.

196. **Step 3.3: pre-consultation check for form of draft ES – action for mpas and the Welsh Ministers**: Once mpas and the Welsh Ministers are satisfied that a draft ES appears to contain all of the information specified in the relevant scoping decision they must then consider whether the draft ES is presented in an *inappropriate* form. The duty to undertake the pre-consultation check for the form of a draft ES is intended to transpose the obligation imposed by Article 5.1 of the EIA Directive, that is, that information

to be submitted by developers is supplied in an appropriate form. This is of particular relevance to the stalled review cases where, because of the considerable delay associated with some of these cases, there may have been repeated requests for additional information resulting in a fragmented and incoherent collection of information gathered over a prolonged period of time.

197. That the duty is framed in the negative is not intended in any way to depart from the obligation imposed by Article 5.1, but is intended solely to address the potential for widely differing judgements being made as to what constitutes an 'appropriate' form for a draft ES. The test is not concerned, for example, with the ideal form for a draft ES, but with securing that a draft ES is presented in a form which is appropriate for the purpose for which the ES is intended. It is worth noting that the main aim of an ES is "to provide good information for two audiences – decision makers and people potentially affected by a project."[17]' It is important therefore, that an ES "..should communicate effectively with these audiences[18].". The Welsh Ministers consider that a draft ES is unlikely to pass the pre-consultation check for form if it falls substantively short of exhibiting the following characteristics[19];

(a) a clear structure with a logical sequence for example, describing existing baseline conditions, predicted impacts (nature, extent and magnitude), scope for mitigation, agreed mitigation measures, significance of unavoidable / residual impacts for each environmental topic;

(b) a table of contents at the beginning of the document;

(c) a clear description of the development consent procedure and how EIA fits within it;

(d) reads as a single document with appropriate cross-referencing;

(e) is concise, comprehensive and objective;

(f) is written in an impartial manner without bias;

(g) includes a full description of the ROMP development proposals;

(h) makes effective use of diagrams, illustrations, photographs and other graphics to support the text;

(i) uses consistent terminology with a glossary;

(j) references all information sources used;

(k) has a clear explanation of complex issues;

(l) contains a good description of he methods used for the studies of each environmental topic;

17 ref Part B, B3 of Cion doc "EIS Review".

18 ibid.

19 ibid.

(m) covers each environmental topic in a way which is proportionate to its importance;

(n) provides evidence of good consultations (if any);

(o) includes a clear discussion of alternatives;

(p) makes a commitment to mitigation (with a programme) and to monitoring;

(q) has a non technical summary which does not contain technical jargon.

198. The European Commission has published guidance on EIA review which the Welsh Ministers commend to mpas as a useful tool to assist with their consideration of whether an ES is presented in an inappropriate form. The guidance is entitled *Guidance on EIA. EIA Review, June 2001'* and is available at http:/ec.europa.eu/environment/eia/eia-support.htm

199. A request for scoping information may be withdrawn at any time between the issuing of the notification and the deadline for submission of the information

200. **Step 3.3.(a): if the form of the draft ES passes the pre-consultation check – action for mpas and the Welsh Ministers to instruct the applicant to publish the ES**: It the mpa or the Welsh Ministers are satisfied that the draft ES contains all of the information specified in the relevant scoping decision and that the draft ES is not in an inappropriate form they will proceed to Step 3.4 (instruction to publish details of the application and ES)..

201. **Step 3.3.(b): If the form of the draft ES does not pass the pre-consultation check – action for mpas and the Welsh Ministers to request presentational changes to the draft ES**: If the mpa is satisfied that the draft ES as submitted, contains all of the information specified in the relevant scoping decision (and therefore a request for specified information is not necessary), but reasonably considers the form of the draft ES to be inappropriate for publication purposes, the mpa is required to notify the applicant within three weeks of receiving the draft ES, of the changes which are required to be made to the form in which the draft ES is presented. The attention of mpas is drawn to the fact that there is no discretion available to mpas to extend the three week period for compliance with this requirement and consequently, if an mpa reasonably concludes that it will be unable to comply with this requirement within the three week period, it may wish to make use of the procedure under regulation 5 to request an extension of time from the Welsh Ministers.

202. The Welsh Ministers are required to give notification in these cases within such period following receipt of a draft ES as they may reasonably require.

203. The notification should be clear about the changes required and, broadly speaking, must include the following information –

(i) the date by which the further draft ES must be provided;

(ii) that if the further draft ES incorporating the required changes is not provided by the date specified, minerals development will automatically be suspended, apart from restoration and aftercare conditions;

(iii) that an automatic suspension of minerals development will remain in effect until every requirement imposed by or under the Regulations has been complied with; not only the requirement which gives rise to a suspension, but all subsequent requirements also;

(iv) that if minerals development remains suspended for a period of two years and any of the steps which are required to be taken by the applicant or operator under the provisions mentioned in regulation 48(3) have yet to be taken, the mpa will be required to consider whether to make a prohibition order under Schedule 9 to the Act with respect to the ROMP development in question; and that for the purposes of that duty-

- a prohibition order may be made in relation to part of a site (in addition to the whole of a site);

- an mpa must assume that minerals development has permanently ceased where minerals development has been suspended for a period of two years and it appears to the authority that resumption of minerals development to any substantial extent is unlikely;

- an mpa must disregard minerals development which is suspended when considering the preceding question, such that that the question to be addressed is whether it appears to the authority that the resumption of authorised minerals development to any substantial extent is unlikely; and

- that a confirmed prohibition order can have effect to terminate planning permission for part of the minerals development to which it originally extended.

(v) that once the mpa or the Welsh Ministers are satisfied that the draft ES includes all of the information specified in the relevant scoping decision and that it is not in an inappropriate form, the applicant or appellant will be instructed to publish notification of the application and the ES, and a summary of the publicity requirements;

(vi) that if the applicant or appellant is instructed to publish notice of the application and ES:-

- the giving of that notice will not preclude the mpa or the Welsh Ministers from requiring the applicant or appellant or a relevant operator to provide further information under regulation 26 or evidence under regulation 27;

- that the applicant or appellant will be required by virtue of regulation 24, to ensure that a reasonable number of copies of the ES are available at the address named in the notices which will be published or posted by the applicant or appellant under regulation 20, as being the address at which copies may be obtained;

- that the applicant or appellant will be required by regulation 22(1) to provide to the relevant mpa or, as the case may be, to the Welsh Ministers, such number of copies of the ES as is specified in the notice, within seven days of the date on which the notice is given;

- that regulation 19 will require the applicant or appellant to submit the documentary evidence of publication specified in regulation 21 within six weeks of the date on which the instruction to publish is given, unless otherwise agreed in writing with the relevant mpa or the Welsh Ministers;

- that a failure to submit the documentary evidence of publication within the timer period allowed for doing so will result in the automatic suspension of minerals development;

(vii) that the applicant or appellant is required to publicise the written notification by site notice, and an explanation of the requirements imposed in that respect by regulation 46;

(viii) the right to challenge the notice and the time period for doing so.

204. If the mpa is satisfied that the draft ES contains all of the information specified in the relevant scoping decision as a result of having received information specified by it in a notice given under regulation 18(6), but reasonably considers the form of the draft ES to be inappropriate for publication purposes, the mpa is required to notify the applicant and the operator (if the specified information was provided by an operator as a result of a written notification given by the mpa), within three weeks of receiving the specified information, of the changes which are required to be made to the draft ES to render its form adequate for publication and consultation. In such cases the Welsh Ministers are required to do so within such period following receipt of the specified information as they may reasonably require. In these cases, the notification which is required to be given to applicants and appellants and operators is the same as that above, and consequently the information summarised at paragraph 203 will be included in a notification given in these circumstances also.

205. The attention of mpas is drawn to the fact that there is no discretion available to mpas to extend the three week period for compliance with this requirement and consequently, if an mpa reasonably concludes that it will be unable to comply with this requirement within the three week period, it may wish to make use of the procedure under regulation 5 to request an extension of time from the Welsh Ministers.

206. Because the ES is intended to be a one or more documents which forms a coherent whole, in cases where specified information is provided by non-applicant operators, the pre-consultation check for the form in which the ES is presented is to be undertaken looking across the range of documents submitted by both the applicant or appellant and by the operator. It may be the case, for example, that information submitted by the applicant is, on its own, presented in an appropriate form, but when taken together with the specified information submitted by an operator, the coherence of the information is reduced to a degree which renders the presentation of the

'cumulative' ES inappropriate for consultation and public participation purposes. For this reason alone, it is in the interests of applicants or appellants and operators to work together to ensure that the information provided by each of them is presented together in an ES which does not fall substantively short of the presentational guidelines set out at paragraph 197; if it does, and is not remedied by the re-submission of an appropriately presented draft ES, minerals development to be carried out by both the applicant or appellant and any relevant operator will be suspended until every requirement imposed by or under the Regulations has been complied with.

207. The fact that the Regulations impose the obligation to re-submit the draft ES incorporating the required presentational changes on the applicant or appellant, as opposed to jointly on applicants (or appellants) and relevant operators, is primarily a technique designed to secure that a single ES is provided from a single source. To do otherwise could introduce unnecessary complexity into the EIA procedure by requiring, for example, separate provision to be made for cases where relevant operators are required to submit specified information, and cases where they are not. The end result will be the same in any event – that is, that if relevant operators are not willing to co-operate with applicants and appellants to compile the draft ES in a form suitable for consultation and public participation, all minerals development will be suspended until the conditions to be attached to the permission(s) are finally determined.

208. The Regulations do not restrict the number of times an mpa or the Welsh Ministers can require an applicant or appellant to re-submit a draft ES incorporating changes to render the form of the ES adequate for publication and consultation. The Regulations are drafted in this way because it may be the case that once a draft ES is re-submitted, it becomes clear that that the form of the further draft ES remains inappropriate; or that, having notified an applicant or appellant of the changes required to be made to the draft ES, the mpa or the Welsh Ministers reasonably conclude that changes which are genuinely necessary for the draft ES to pass the pre-consultation checks for publication and consultation were not identified in the notification previously given. With respect to this latter point, the Welsh Ministers do not expect the power to give more than one notification to be used as a substitute for the active assessment of the form of the draft ES against the list of indicative characteristics referred to at paragraph 197.

209. Mpas and the Welsh Ministers must take such steps (other than posting site notices) as they consider most likely to bring any request for presentational changes and the written notification which accompanies it, to the attention of persons likely to be interested in the EIA application. The mpa is also required to place a copy of the request and the notification on the register.

210. **Step 3.3.(c): Receiving a request for presentational changes to draft ES – action by applicants, appellants and operators**: An applicant or appellant who receives a request for presentational changes to be made to a draft ES must take action in two respects – post a site notice, and re-submit the draft ES with the presentational changes required.

211. The applicant or appellant must post a copy of the request and written notification received on the land within 14 days of the date of the notification, and must leave it in place for a period of at least 14 days. The copy must be affixed firmly to some object on the land and sited and displayed in such a

way as to be easily visible to, and readable by, members of the public without going on to the land. The obligation to post a site notice does not apply if an applicant or appellant does not have, and is not reasonably able to acquire, the rights required to comply with that obligation.

212. The applicant or appellant must submit a further draft ES incorporating the changes identified in the notification by the end of the three week period which begins with the date on which the notice requesting the specified information is given, unless an extension to the three week period has been agreed in writing with the mpa or the Welsh Ministers. The Welsh Ministers would not expect the period to be extended by agreement in order to facilitate avoidable or unreasonable delays, but to be used sparingly where, in all the circumstances of the particular case in question, the changes identified in the notification cannot reasonably be required to be made to the draft ES in time for submission of the further draft required within the three week period.

213. Applicants and appellants should note in particular here, that in cases where an extension of time has not been agreed in writing, the three week period runs from the date on which the notice is *given* by the mpa or the Welsh Ministers – not the date on which the notice is received by the applicant. In those cases where an extension has been agreed in writing, the further draft ES must be provided by the date on which the extended period ends. If the further draft ES is not provided by the applicant or appellant by the date it is due, minerals development will be suspended (apart from restoration and aftercare conditions) until the conditions to be attached to the permission are *finally determined*.

214. Relevant operators will need to work with applicants and appellants to ensure that the specified information submitted by them is incorporated into the draft ES with the information submitted by applicants and appellants, so that the draft ES to be re-submitted forms a coherent whole which is suitable for consultation and publication purposes in light of the presentational guidelines referred to at paragraph 197.

215. Applicants should note that where an application has been referred to the Welsh Ministers after a notice requesting presentational changes has been given by the relevant mpa, but before the further draft ES is provided, the further draft ES must be provided to the Welsh Ministers – not to the relevant mpa.

216. **Step 3.4: instruction to publish details of the application and the ES - action for mpas and the Welsh Ministers**: If mpas or the Welsh Ministers are satisfied that the draft ES contains all the information specified in the relevant scoping decision and that the draft ES is not presented in an inappropriate form, then an mpa or the Welsh Ministers must, in writing, instruct the applicant or appellant to publish details of the application and the ES, give written notification to the applicant or appellant of the matters set out in regulation 18(22), and of those set out in paragraph 14 of Schedule 3. Because the draft ES now meets the threshold set by the manner in which "environmental statement" is defined, the draft ES is now an "environmental statement" for the purposes of the Regulations.

217. If, having carried out the two stage pre-consultation check on receipt of a draft ES, an mpa is satisfied that the content and form of the draft ES as submitted passes the pre-consultation check, the mpa is required to give an instruction

to publish within three weeks of having received the draft ES in question. The attention of mpas is drawn to the fact that there is no discretion available to mpas to extend the three week period for compliance with this requirement and consequently, if an mpa reasonably concludes that it will be unable to comply with this requirement within the three week period, it may wish to make use of the procedure under regulation 5 to request an extension of time from the Welsh Ministers. The Welsh Ministers must give an instruction to publish in these cases, within such period following receipt of a draft ES as they may reasonably require.

218. If an mpa is satisfied that a draft ES includes all of the information specified in the relevant scoping decision as a result of having received specified information in response to a notice given by the mpa and, having carried out the second stage of the pre-consultation check (form of draft ES), is satisfied that that no changes need to be made to the form in which the ES is presented (because the form of the draft ES, including the specified information provided, is not inappropriate), the mpa is required to give an instruction to publish within three weeks of having received the specified information. In such cases, the Welsh Ministers are required to give an instruction to publish within such period following receipt of the specified information as they may reasonably require. The attention of mpas is drawn to the fact that there is no discretion available to mpas to extend the three week period for compliance with this requirement and consequently, if an mpa reasonably concludes that it will be unable to comply with this requirement within the three week period, it may wish to make use of the procedure under regulation 5 to request an extension of time from the Welsh Ministers.

219. If an mpa is satisfied that a draft ES includes all of the information specified in the relevant scoping decision and, as a result of having received a further draft ES incorporating presentational changes in response to a notice given by the mpa, the mpa is required to give an instruction to publish within three weeks of having received the further draft ES. In such cases, the Welsh Ministers are required to give an instruction to publish within such period following receipt of the further draft ES as they may reasonably require.

220. The written notice required must instruct the applicant or appellant to comply with the publicity requirements imposed; specify the number of copies of the ES which the mpa or, as the case may be, the Welsh Ministers, require in order to comply with the requirement imposed on them to provide a copy to each consultation body and two copies to the Welsh Ministers (in the case of a notice given by mpas), or one copy to the relevant mpa (in the case of a notice given by the Welsh Ministers). The notice must also identify to the applicant or appellant, any person of whom the mpa or the Welsh Ministers is or are aware, who is or is likely to be affected by, or to have an interest in, the application, and who is unlikely to become aware of it by means of a site notice or by local advertisement; and must notify the applicant or appellant of the matters set out in paragraph 14 of Schedule 3 which, in summary, include the following:

(i) that regulation 19(1) requires the applicant or appellant to submit the documentary evidence of publication specified in regulation 21 within six weeks of the date of the notice unless otherwise agreed in writing with the relevant mpa or the Welsh Ministers;

(ii) the date by which the documentary evidence in question must be submitted;

(iii) an explanation of the publicity requirements imposed by regulation 20;

(iv) an explanation of the documentary evidence which the applicant or appellant is required by regulation 21 to submit;

(v) that if the documentary evidence of publication is not submitted by the date specified, minerals development will automatically be suspended, apart from restoration and aftercare conditions;

(vi) that the applicant or appellant must provide mpa or, as the case may be, the Welsh Ministers, with the number of copies of the ES specified in the notice within seven days of the date of the notice;

(vii) that the applicant or appellant is required by regulation 24 to ensure that a reasonable number of copies of the ES are available at the address named in the notices which will be published or posted by the applicant or appellant under regulation 20, as being the address at which copies may be obtained;

(viii) that regulation 25 entitles the applicant or appellant to make a reasonable charge reflecting printing and distribution costs for a copy of an ES made available to a member of the public in consequence of the duty imposed on the applicant or appellant by regulation 24;

(ix) that regulation 26 entitles the mpa or the Welsh Ministers to require the applicant or appellant or a relevant operator to provide further information; an explanation of what constitutes “further information”; the six week deadline for submission of further information if required (unless otherwise agreed in writing with the relevant mpa or the Welsh Ministers); the automatic suspension of minerals development (apart from restoration and aftercare conditions) which will engage if further information is not provided within the period allowed for doing so;

(x) that regulation 27 entitles the mpa or the Welsh Ministers to require the applicant or appellant or a relevant operator to produce evidence to verify information provided by the applicant or appellant, and explanation of the information to which regulation 27 applies; the six week deadline for submission of evidence if required (unless otherwise agreed in writing with the relevant mpa or the Welsh Ministers); the automatic suspension of minerals development (apart from restoration and aftercare conditions) which will engage if evidence is not produced within the period allowed for doing so;

(xi) that an automatic suspension of minerals development will remain in effect until every requirement imposed by or under the Regulations has been complied with; not only the requirement which gives rise to a suspension, but all subsequent requirements also;

(xii) that if minerals development remains suspended for a period of two years and any of the steps which are required to be taken by the applicant under the provisions mentioned in regulation 48(3) have yet to be taken, the mpa will be required to consider whether to make a prohibition order under Schedule 9 to the Act with respect to the ROMP development in question; and that for the purposes of that duty-

- a prohibition order may be made in relation to part of a site (in addition to the whole of a site);
- an mpa must assume that minerals development has permanently ceased where minerals development has been suspended for a period of two years and it appears to the authority that resumption of minerals development to any substantial extent is unlikely;
- an mpa must disregard minerals development which is suspended when considering the preceding question, such that that the question to be addressed is whether it appears to the authority that the resumption of authorised minerals development to any substantial extent is unlikely; and
- that a confirmed prohibition order can have effect to terminate planning permission for part of the minerals development to which it originally extended.

(xiii) that the applicant or appellant is required to publicise the written notification by site notice, and an explanation of the requirements imposed in that respect by regulation 46;

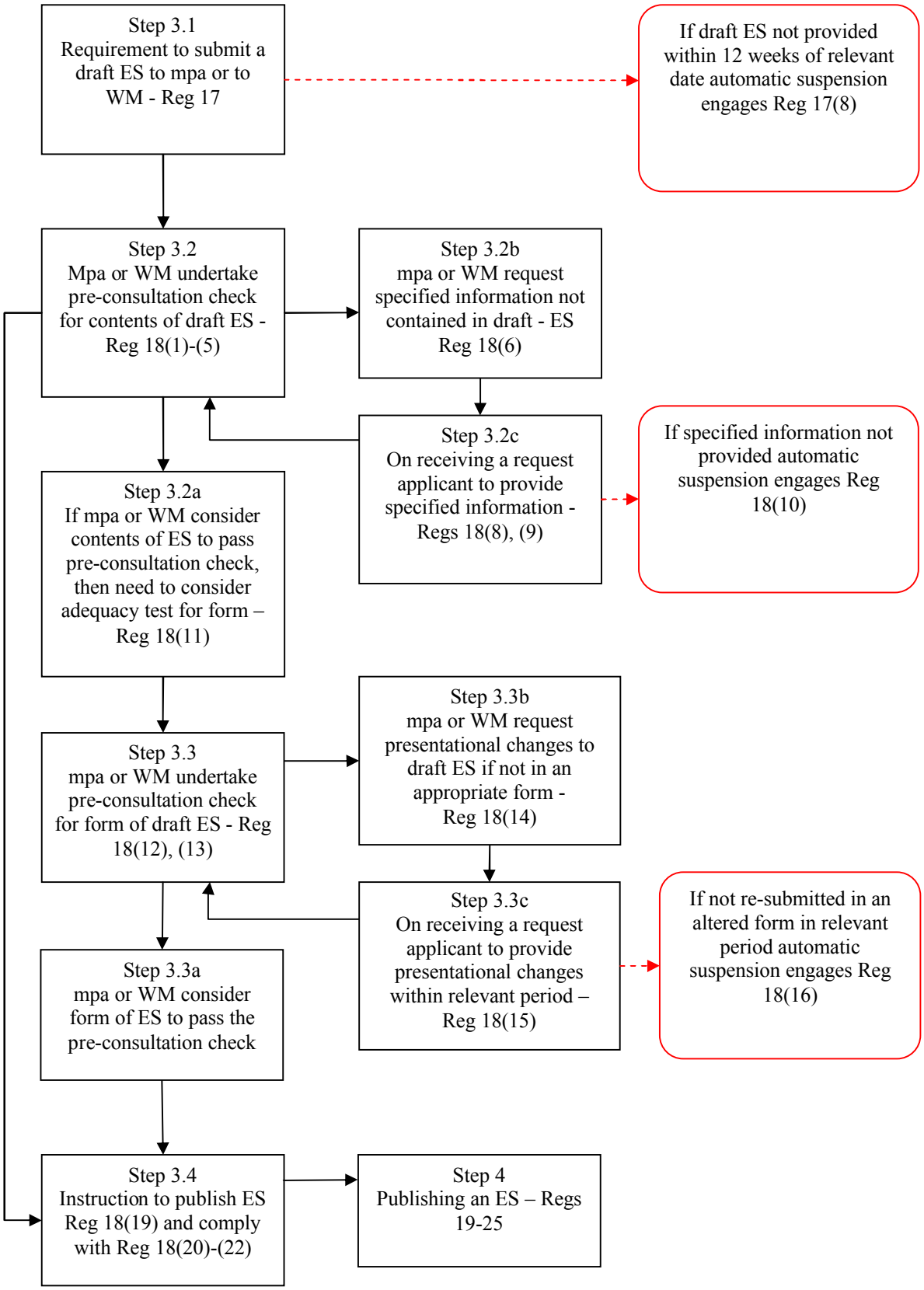
(xiv) that the mpa or the Welsh Ministers will be required to suspend consideration of the application or appeal until the end of the period within which the applicant or appellant must submit the documentary of publication; and that they are not permitted to determine the application or appeal during the 21 days which follow;

(xv) the right to challenge the notice and the time period for doing so.

221. Where an instruction to publish is given by an mpa or the Welsh Ministers, they are required to suspend their consideration of the application or appeal until the end of the consultation period; and they are not permitted to determine the application or appeal during the 21 days which follow.

222. Mpas and the Welsh Ministers are required to take such steps as they consider appropriate to bring the instruction to publish and the accompanying written notification to the attention of persons likely to be interested in the application. Mpas must also place copies on the register.

Fig 4: Summary - Submission of a draft ES



Publication Procedure

Step 4: Environmental Statement – publicity and consultation

223. Step 4 of the procedure sets the framework for consultation on the ES. The onus is on applicants and appellants to undertake publicity regarding ESs. They are also responsible for providing confirmation to the relevant mpa or the Welsh Ministers, in writing, that they have indeed published the ES and complied with the publicity requirements.

224. **Step 4.1: receipt of instruction to publish ES - action by applicants and appellants**: : An applicant or appellant who receives an instruction to publish an ES must take action in five respects –

(a) post a site notice;

(b) publish notice of the application and ES (which will also include the posting of a site notice);

(c) provide consultation copies of the ES to the relevant mpa or the Welsh Ministers;

(d) ensure that sufficient copies of the ES are available for inspection by members of the public, and

(e) submit documentary evidence of publication.

225. With respect to the posting of a site notice in connection with the instruction to publish received from the relevant mpa or the Welsh Ministers, the applicant or appellant must post a copy of the written notification received on the land within 14 days of the date of the notification, and must leave it in place for a period of at least 14 days. The copy must be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land. The obligation to post a site notice does not apply if an applicant or appellant does not have, and is not reasonably able to acquire, the rights required to comply with that obligation.

226. The written notification which accompanied the instruction to publish will have specified the date by which the applicant or appellant must submit the documentary evidence of publication to the mpa or the Welsh Ministers. The starting point is that the documentary evidence must be submitted by the applicant or appellant within six weeks of the date on which the instruction to publish is given. The six week period can be extended by agreement in writing with the relevant mpa or the Welsh Ministers. If the documentary evidence of publication is not provided by the applicant or appellant by the date it is due, minerals development will be suspended (apart from restoration and aftercare conditions) until every requirement imposed by or under the Regulations has been complied with.

227. The Welsh Ministers are concerned to secure the expeditious determination of all stalled reviews and consequently would not expect the six week period to be extended to facilitate avoidable or unreasonable delays. When considering

whether to agree to extend the six week period, the Welsh Ministers consider that it may be reasonable to take account of any time needed to acquire such rights as would enable the applicant or appellant to post on the land the notice required by regulation 20(3), but only where there is a reasonable expectation that the applicant or appellant would be able to do so within a reasonable period of time.

228. That an applicant or appellant is required to submit documentary evidence of publication within the six week period (or other period agreed in writing with the relevant mpa or the Welsh Ministers), means that the applicant or appellant must carry out the publicity requirements imposed by regulation 20 in good time to be able to do so. The following is a summary of the publicity-related activities which applicants and appellants must undertake in order to comply with regulation 20 (and consequently, in order to be able to comply with the requirement to submit documentary evidence that the regulation 20 requirements have been complied with, within the period allowed for doing so). The requirement to post a site notice does not apply if the applicant or appellant has not, and is not reasonably able to acquire, such rights as would enable the applicant or appellant to comply with those requirements (although in such circumstances, a certificate to confirm that fact will be required by the deadline):

(i) placing an advertisement in a local newspaper containing the details set out in regulation 20(1);

(ii) posting a site notice which contains the information referred to in regulation 20(1) and which –

- must be easily visible to, and readably by, member of the public without going onto the land and which must be firmly fixed to an object on the land;
- must be left in place for at least 7 days in the 28 days which precede the date on which the certificate of confirmation concerning compliance with the site notice requirements required by regulation 21(2)(b) is submitted;
- includes notification that the last day on which the documents will be available for inspection must not be less than 21 days after date on which the notice is first posted; and

(iii) serving notice of the details set out in regulation 20(1) on any person identified to the applicant or appellant as being, or likely to be, affected by, or having an interest in the application, except that the latest date on which the documents will be available for inspection must not be less than 21 days after the date on which the notice is given to the person in question.

229. **Step 4.2: consultation copies of ES – action by applicants and appellants**: Regulation 22(1) requires applicants and appellants to provide the relevant mpa or the Welsh Ministers with copies of ESs; the number of copies required in any given case will be set out in the notice which accompanies the instruction to publish. Applicants and appellants must provide the required number of copies free of charge within seven days of the

date of that notice. These copies are required by mpas and the Welsh Ministers in order to comply with the requirements imposed on them to provide copies to the consultation bodies and to each other. If an applicant or appellant does not comply with the duty to provide copies of the ES within the time period allowed for doing so, minerals permission is not suspended. The Regulations are drafted in this way because the Welsh Ministers consider that to automatically suspend minerals development for a failure to provide copies of ESs in circumstances where the relevant mpa or the Welsh Ministers will already have in their possession, at least one copy of the ES in question, would be a disproportionate response to the failure in question. The Welsh Ministers encourage applicants and appellants to engage constructively with the EIA procedure and to provide copies to mpas and the Welsh Minister within the seven day period.

230. The attention of mpas is drawn to the fact that the duty to provide copies of ESs to the consultation bodies and to the Welsh Ministers is not dependant on copies having been provided for that purpose by the applicant. Thus, if an applicant refuses to provide the copies required, mpas will themselves need to make sufficient copies of the ES, in order to place themselves in a position to be able to comply with the duties imposed by regulation 22.

231. The written notifications which accompany scoping decisions and which accompany requests for specified information or presentational changes to a draft ES will have informed applicants and appellants in advance, of the requirement imposed by regulation 24, and of the right conferred by regulation 25. Regulation 24 requires applicants and appellants to ensure that a reasonable number of copies of the ES are available for inspection at the address given in that behalf, in the notices published, served and posted under regulation 20. Regulation 25 permits a charge reflecting printing and distribution costs to be made to a member of the public for an ES made available in this way.

232. If an applicant or appellant does not comply with the duty to ensure that a reasonable number of copies of the ES are available for inspection at the relevant address, minerals permission is not suspended. The Regulations are drafted in this way because the Welsh Ministers consider that to automatically suspend minerals development for a failure to provide a reasonable number of copies of ESs in circumstances where the relevant mpa or the Welsh Ministers will already have in their possession, at least one copy of the ES in question, would be a disproportionate response to the failure in question. The Welsh Ministers urge applicants and appellants to engage constructively with the EIA procedure and to provide a reasonable number of copies for inspection, not only because effective public participation demands it, but because pro-active engagement with local communities will foster good relationships with the communities within which applicants and appellants operate.

233. **Step 4.3; consultation copies of ES – action by mpas and the Welsh Ministers**: Within 14 days of giving an instruction to publish, mpas must -

(a) send two copies of the ES, a copy of the application and of any documents submitted with the application, to the Welsh Ministers;

(b) send a copy of the ES to each of the consultation bodies, together with written notification stating that representations should be made in writing to

the mpa within 42 days of the date of the notice, unless otherwise agreed in writing with the relevant mpa.

234. The Welsh Ministers are required, as soon as reasonably practicable following the date on which they give an instruction to publish, to send a copy of the ES to the relevant mpa and to comply with the requirement mentioned at (b) above.

235. **Step 4.4: documentary evidence of publication – action by applicants and appellants**: The instruction to publish will have been accompanied by written notification specifying the time period within which an applicant or appellant must comply with the requirement to submit documentary evidence that the publicity requirements have been complied with. This means that, following the publication, service and, if applicable, posting, of the notices required, the applicant or appellant must submit the documentary evidence specified in the Regulations to the relevant mpa or to the Welsh Ministers by the date specified in the notice. The documentary evidence which is required comprises, in summary, the following –

(a) a certified copy of the notice published in the local newspaper;

(b) a certificate by or on behalf of the applicant or appellant confirming either-

(i) that the site notice required to be posted was posted in compliance with the relevant requirements and, if the notice was subsequently defaced or removed, that the applicant took reasonable steps for its protection or replacement; or

(ii) that the applicant or appellant, having taken reasonable steps to acquire the rights to do so, was unable to comply with the site posting requirements;

(c) a certified copy of any notice given to any person notified to the applicant or appellant as likely to be affected by or to have an interest in the application.

236. If the documentary evidence is not submitted by the date it is due, minerals development will be suspended (apart from restoration and aftercare conditions) until every requirement imposed by or under the Regulations has been complied with. Applicants and appellants should note in particular here, that where an extension to the six week period for provision of the documentary evidence is not agreed, the six week period runs from the date on which the notice is *given* by the mpa or the Welsh Ministers – not the date on which the notice is received by the applicant.

237. Applicants should note that where an application has been referred to the Welsh Ministers after an instruction to publish has been given by the mpa, but before the documentary evidence of publication has been submitted, the documentary evidence must be provided to the Welsh Ministers – not to the relevant mpa.

238. The purpose of requiring the submission of documentary evidence of publication is to secure that the interested public are given early and effective opportunities to participate in the EIA procedure. This, in turn, requires the public concerned to be afforded adequate notification of, and access to,

amongst other matters, relevant information concerning the proposed ROMP development including the evidence verifying any information upon which applicants and appellants intend to rely.

239. It is a criminal offence to intentionally or recklessly issue a certificate purporting to comply with the certification requirements in relation to the posting of site notices. A person is liable on summary conviction to a fine not exceeding level 3 (currently £1,000) on the standard scale. .

Step 5: Further Information and Evidence

Further Information

240. The Regulations enable mpas or Welsh Ministers to require applicants and appellants and relevant operators to submit further information. This provision is required because, although the intention of the regulations is to secure early and thorough consideration by establishing the primacy of the scoping decision, it may become apparent at any stage in the EIA procedure, that the information identified in the relevant scoping decision is in fact insufficient to permit the proper consideration of the likely environmental effects of the relevant EIA development. Without the ability to require further information therefore, mpas and the Welsh Ministers would be unable to determine stalled reviews of this kind in accordance with the requirements of the EIA Directive.

241. It is important to note here, that because “environmental statement” is defined by reference to the information which is specified in the relevant scoping decision, a draft ES does not fail to meet the pre-consultation check threshold for contents because an mpa or the Welsh Ministers subsequently conclude that the relevant scoping decision should have specified more or other information than it did. In such cases, regulation 26 can be used to require further information; but the fact that further information is required does not hold up the steps to be taken concerning the pre-consultation check for the draft ES, or the publication procedures for the ES. In these cases, the further information will also be subject to a pre-consultation check of the form in which it is presented to ensure effective public participation; and will be subject to separate publication procedures under regulation 27. The Regulations are drafted in this way with a view to avoiding the potential for incremental requests for further information to delay commencement of the first substantive public participation element of the EIA procedure.

242. It is worth noting that further information is not subjected to a pre-consultation check for content as is the case for draft ESs. This is because further information will be information over and above that which is required to be contained in an ES and consequently, the issues concerning the currency of information to be relied upon by applicants or appellants, where that information may have been assembled over a prolonged period of time prior to the Regulations coming into force, should not arise in connection with further information.

243. The Regulations do not impose any deadline by which further information must be requested by mpas. This is because further information may not be required in every case and accordingly, the ability to request further information is discretionary, not mandatory

244. The information which applicants, appellants and relevant operators can be required to provide under regulation 26 is information which mpas or the Welsh Ministers reasonably consider –

(i) relates to the main effects of the ROMP development; or

(ii) is of material relevance to the determination of conditions to which the planning permission is to be subject,

and which, having regard in particular to current knowledge and methods of assessment, can reasonably be required to be compiled.

245. This means that consideration will need to be given in every case, to the question of whether information which it is proposed should be the subject of a request, does in fact *relate to the main effects* of the ROMP development; or whether that information is in fact *of material relevance to the determination of conditions;* and also to the question of whether, given current knowledge and methods of assessment, that information can reasonably be required to be compiled.. If any of these questions is reasonably to be answered in the negative, a request for further information should not be made. .

246. The starting point is that further information must be submitted within six weeks of the date on which the notice is given. The six week period can be extended by agreement in writing with the relevant mpa or the Welsh Ministers. The Welsh Ministers are concerned to secure the expeditious determination of all stalled reviews and consequently would not expect the six week period to be extended to facilitate avoidable or unreasonable delays.

247. When considering whether to agree to extend the six week period the nature of the information requested and the steps required to be undertaken by applicants or appellants or relevant operators to obtain that information will be relevant. The Welsh Ministers consider that it would be reasonable to take into account for example, any time needed to secure information from third parties; time needed to undertake species surveys which can only be conducted at certain times of the year; time needed to compile survey data on groundwater conditions, and so forth.

<u>Evidence</u>

248. Mpas and the Welsh Ministers may also require applicants, appellants and operators to submit evidence to verity information which they have previously provided. Thus where, for example, an applicant or appellant contends in its draft ES that the results of a species survey indicate that the species in question no longer inhabits the area, the relevant mpa or the Welsh Ministers could require the applicant or appellant to submit evidence in support of that contention. Evidence can be called for from applicants or appellants to verify:–

(a) screening information;

(b) scoping information;

(c) information in a draft environmental statement;

(d) information in an environmental statement;

(e) further information; and

(f) any other information.

249. Evidence may be called for from operators to verify any scoping, specified or further information previously submitted by them.

250. In determining whether it is reasonable to call for evidence in any particular case, account should be taken of the extent to which the applicant, appellant or operator may reasonably be required to compile the evidence having regard, amongst other matters, to current knowledge and methods of assessment. This is important because minerals development will be automatically suspended if the evidence requested is not produced within the time period allowed for doing so.

251. The Regulations do not impose any deadline by which evidence must be called for by mpas. This is because evidence may not be needed to substantiate information already provided and accordingly, the ability to call for evidence is discretionary, not mandatory.

252. The parameters surrounding the call for evidence are the same as for further information, as described in paragraphs 231 and 232.

253. **Step 5.1: request for further information and/or evidence – action by mpas and the Welsh Ministers**: An applicant, appellant or operator must be notified, in writing, if further information is required, or if mpas or the Welsh Ministers wish to call for evidence to verify information which an applicant, appellant or operator has been required to provide, or other substantive information which an applicant or appellant has voluntarily provided, they must notify the applicant, appellant or operator in writing of the evidence required.

254. The written notification must set out clearly and precisely what information and/or evidence is needed, so that applicants, appellants or operators are aware at the outset, of exactly what information and/or evidence they are being required to provide, and so that any potential for subsequent uncertainty as to whether the information and/or evidence in question has or has not been provided is avoided. This is important because suspension of minerals development will automatically engage if the applicant, appellant or operator fails to submit the further information and/or evidence within the time period allowed for doing so. This is also important because the Regulations do not oblige mpas to subject further information and/or evidence to a pre-consultation check for contents and consequently there will be no 'second chance' for applicants, appellants or operators to get it right. For this reason also, applicants, appellants and operators are advised to contact the relevant mpa or the Welsh Ministers immediately if they are unclear about what information and/or evidence they are in fact being asked to provide.

255. The evidence which an applicant, appellant or operator may be required to provide under the Regulations, is evidence which the mpa or the Welsh Ministers may reasonably call for. When considering whether it is reasonable to call for evidence of a particular kind in any case, the Welsh Ministers would expect account to be taken, for example, of whether current knowledge and

methods of assessment indicate in favour, or against, calling for the evidence in question.

256. The Welsh Ministers would expect mpas to look sympathetically on a request for an extension of time to provide further information and/or evidence, if that request arises as a result of a genuine and inadvertent ambiguity in the written notification given by the authority. As the Regulations impose an obligation on mpas to state clearly and precisely the information and/or evidence which is required, the Welsh Ministers do not anticipate that such ambiguities should arise other than in exceptional circumstances. The written notification must also include notification of the matters set out in paragraphs 15 and 16 of Schedule 3. Those matters are, in summary –

(i) the date by which the further information and/or evidence is required;

(ii) that if the further information and/or evidence is not provided by the date specified, minerals development will automatically be suspended, apart from restoration and aftercare conditions;

(iii) that on receipt of the further information and/or evidence the mpa or the Welsh Ministers will be required to consider whether the information and/or evidence is presented in an inappropriate form;

(iv) that if changes are required to be made to the form in which the further information and/or evidence is presented as a result of a notification given under regulation 28(5), failure to re-submit the further information and/or evidence in a form incorporating the required changes within the period allowed for doing so, will result in minerals development being automatically be suspended, apart from restoration and aftercare conditions;

(v) that once the mpa or the Welsh Ministers are satisfied that the further information and/or evidence is not presented in an inappropriate form, the applicant, appellant or operator will be instructed to publish the further information and/or evidence and to submit documentary evidence that they have done so, and that failure to do so within the time period allowed for doing so will result in the automatic suspension of minerals development;

(vi) an explanation of the publicity requirements imposed on the applicant, appellant or relevant operator, by regulation 30;

(vii) that an automatic suspension of minerals development will remain in effect until every requirement imposed by or under the Regulations has been complied with; not only the requirement which gives rise to a suspension, but all subsequent requirements also;

(viii) that if minerals development remains suspended for a period of two years and any of the steps which are required to be taken by the applicant under the provisions mentioned in regulation 48(3) have yet to be taken, the mpa will be required to consider whether to make a prohibition order under Schedule 9 to the Act with respect to the ROMP development in question; and that for the purposes of that duty-

- a prohibition order may be made in relation to part of a site (in addition to the whole of a site);

- an mpa must assume that minerals development has permanently ceased where minerals development has been suspended for a period of two years and it appears to the authority that resumption of minerals development to any substantial extent is unlikely;

- an mpa must disregard minerals development which is suspended when considering the preceding question, such that that the question to be addressed is whether it appears to the authority that the resumption of authorised minerals development to any substantial extent is unlikely; and

- that a confirmed prohibition order can have effect to terminate planning permission for part of the minerals development to which it originally extended.

(ix) that the mpa or the Welsh Ministers will be required to suspend consideration of the application or appeal until the end of the period within which the applicant, appellant or operator must submit the documentary evidence of publication; and that they are not permitted to determine the application or appeal during the 21 days which follow;

(x) that the applicant or appellant is required to publicise the written notification by site notice, and an explanation of the requirements imposed in that respect by regulation 46;

(xi) the right to challenge the notice and the time period for doing so.

257. A request for further information or evidence may be withdrawn at any time between the issuing of the notification and the deadline for submission of the information or evidence in question.

258. Mpas and the Welsh Ministers are required to take such steps (other than posting site notices) as they consider most likely to bring the request for further information and/or evidence and the written notification which accompanies it, to the attention of persons likely to be interested in the application. Mpas are also required to place copies on the register.

259. **Step 5.2: receipt of request for further information and/or evidence – action by applicants, appellants and operators**: An applicant, appellant or operator who receives a written notification requesting further information and/or evidence must take action in two respects – post a site notice, and provide the information and/or evidence requested.

260. The applicant, appellant or operator must post a copy of the request and written notification received on the land within 14 days of the date of the notification, and must leave it in place for a period of at least 14 days. The copy must be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land. The obligation to post a site notice does

not apply if an applicant, appellant or operator does not have, and is not reasonably able to acquire, the rights required to comply with that obligation.

261. If an applicant, appellant or operator receives a request for further information and/or evidence, the further information requested must be provided within six weeks of the date of the notice unless otherwise agreed in writing with the relevant mpa or the Welsh Ministers. Applicants, appellants and operators should note in particular here, that in cases where an extension of time has not been agreed, the six week period runs from the date on which the notice is *given* by the mpa or the Welsh Ministers – not the date on which the notice is received by the applicant or appellant. In those cases where an extension has been agreed in writing, the further information and/or evidence must be provided by the date on which the extended period ends.

262. If the further information and/or evidence is not provided by the date it is due, minerals development will be suspended (apart from restoration and aftercare conditions) until every requirement imposed by or under the Regulations has been complied with.

263. Applicants and operators should note also that where an application has been referred to the Welsh Ministers after a request for further information and/or evidence has been made by the relevant mpa, but before the further information has been provided, the further information and/or evidence must be provided to the Welsh Ministers – not to the relevant mpa.

264. **Step 5.3: receipt of further information and/or evidence – action by mpas and the Welsh Ministers**: Further information and/or evidence must be made available to the public. When mpas or the Welsh Ministers receive further information or evidence, they must consider whether the information or evidence is presented in a form suitable for the purposes of consultation and public participation.

265. The starting point is that, within three weeks of receiving further information or evidence, mpas must either notify the applicant or operator of the changes which are required to be made to the form in which the further information or evidence is presented, or instruct the applicant or operator to publish the further information or evidence. The Welsh Ministers are required to do so as soon as reasonably practicable following receipt of further information or evidence.

266. Because further information or evidence may be required at any time during the EIA procedure, it is technically possible that that information or evidence could be provided before the applicant or appellant is instructed to publish the ES. It is also possible that that further information or evidence would, as a stand alone document, be of less practical value for the purposes of consultation and public participation, than it would be were it published alongside the associated ES. For this reason, the Regulations allow (but do not require) mpas to defer instructing an applicant or operator to publish further information or evidence until three weeks following the date on which the authority instructs the applicant to publish the ES. This does not alter the requirement for mpas to consider the form in which the further information or evidence is presented within three weeks of receiving it, nor does this alter the requirement for mpas to notify an applicant or operator of any changes required to be made to the form in which further information or evidence is presented within that three week period.

267. The attention of mpas is drawn to the fact that there is no discretion available to mpas to extend the three week period for compliance with this last requirement and consequently, if an mpa reasonably concludes that it will be unable to comply with this requirement within the three week period, it may wish to make use of the procedure under regulation 5 to request an extension of time from the Welsh Ministers.

268. **Step 5.3 a): if the form of further information or evidence passes the pre-consultation check– action by mpas and the Welsh Ministers to give instruction to publish**: If mpas and the Welsh Ministers are satisfied with the form in which the further information or evidence is presented, they will proceed to Step 7.4 (instruction to publish).

269. **Step 5.3 b): if the form of further information or evidence does not pass the pre-consultation check – action by mpas and the Welsh Ministers to request presentational changes**: If mpas or the Welsh Ministers reasonably consider the further information or evidence is presented in a form which is inappropriate for consultation purposes, mpas and the Welsh Ministers are required to notify the applicant, appellant or operator of the changes which need to be made to the form in which the further information or evidence is presented. mpas are required to do so within three weeks of receipt of the information or evidence in question. The attention of mpas is drawn to the fact that there is no discretion available to mpas to extend the three week period for compliance with this requirement and consequently, if an mpa reasonably concludes that it will be unable to comply with this requirement within the three week period, it may wish to make use of the procedure under regulation 5 to request an extension of time from the Welsh Ministers.

270. The Welsh Ministers are required to notify any presentational changes required within such period following receipt of the information or evidence as they may reasonably require.

271. The notification must be in writing and should set out clearly the changes which are required to the manner in which the further information or evidence is presented, so that any potential for uncertainty as to whether the required changes have or have not been incorporated is avoided. This is important because suspension of minerals development will automatically engage if the applicant or appellant fails to re-submit the further information or evidence in a form incorporating the required changes within the time period allowed for doing so. The written notification must also include notification of the matters set out in paragraph 18 of Schedule 3. Those matters are, in summary –

(i) the further information or evidence must be re-submitted;

(ii) that if the further information or evidence is not re-submitted in a form incorporating the required changes by the date specified, minerals development will automatically be suspended, apart from restoration and aftercare conditions;

(iii) that an automatic suspension of minerals development will remain in effect until every requirement imposed by or under the Regulations has been complied with; not only the requirement which gives rise to a suspension, but all subsequent requirements also;

(iv) that if minerals development remains suspended for a period of two years and any of the steps which are required to be taken by the applicant, appellant or operator under the provisions mentioned in regulation 48(3) have yet to be taken, the mpa will be required to make a prohibition order under Schedule 9 to the Act with respect to the ROMP development in question; and that for the purposes of that duty-

- a prohibition order may be made in relation to part of a site (in addition to the whole of a site);

- an mpa must assume that minerals development has permanently ceased where minerals development has been suspended for a period of two years and it appears to the authority that resumption of minerals development to any substantial extent is unlikely;

- an mpa must disregard minerals development which is suspended when considering the preceding question, such that that the question to be addressed is whether it appears to the authority that the resumption of authorised minerals development to any substantial extent is unlikely; and

- that a confirmed prohibition order can have effect to terminate planning permission for part of the minerals development to which it originally extended.

(v) that if, having received the re-submitted further information or evidence the mpa or the Welsh Ministers are satisfied that it is not in an inappropriate form-

- the applicant, appellant or operator will be required to publicise the further information or evidence in accordance with regulation 30 and to submit documentary evidence of having done so;

- that the applicant, appellant or operator will be required to provide the mpa or, as the case may be, the Welsh Ministers, with such number of copies of the further information or evidence as may be specified in a notice in that behalf which will be given by the mpa or the Welsh Ministers to the applicant, appellant or operator following their being satisfied as to the form of the re-submitted further information or evidence and that the further copies will be required to be provided within seven days of the notice being so given;

- that the applicant, appellant or operator will be required by regulation 33 to ensure that a reasonable number of copies of the further information or evidence are available at the address named in the notices which will be published by the applicant, appellant or operator under regulation 30, as being the address at which copies may be obtained;

- that regulation 34 entitles the applicant, appellant or operator to make a reasonable charge reflecting printing and distribution

costs for a copy of further information or evidence made available to a member of the public in consequence of the duty imposed on the applicant, appellant or operator by regulation 33;

- that the mpa or the Welsh Ministers will be required to suspend consideration of the application or appeal until the end of the period within which the applicant, appellant or operator must submit the documentary evidence of publication; and that they are not permitted to determine the application or appeal during the 21 days which follow;

(vi) that the written notification does not preclude the mpa or the Welsh Ministers from subsequently requiring further information and/or evidence;

(vii) that the applicant or appellant, appellant or relevant operator is required to publicise the written notification by site notice, and an explanation of the requirements imposed in that respect by regulation 46;

(viii) the right to challenge the notice and the time period for doing so.

272. A request for the re-submission of further information or evidence may be withdrawn at any time between the issuing of the notification and the deadline for submission of the information

273. Mpas and the Welsh Ministers are required to take such steps (other than posting site notices) as they consider most likely to bring the request for presentational changes and the accompanying written notification to the attention of persons likely to be interested in th**e** application. Mpas are also required to place copies on the register.

274. **Step 5.3c): On receiving a request for presentational changes – action by applicants, appellants and operators**: An applicant, appellant or operator who receives a request for presentation changes must take action in two respects – post a site notice, and re-submit the further information or evidence with the presentational changes requested.

275. The applicant, appellant or operator must post a copy of the request and the written notification received on the land within 14 days of the date of the notification, and must leave it in place for a period of at least 14 days. The copy must be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land. The obligation to post a site notice does not apply if an applicant, appellant or operator does not have, and is not reasonably able to acquire, the rights required to comply with that obligation.

276. The applicant, appellant or operator must re-submit the further information or evidence in a form which incorporates the changes identified in the notice by the end of the period specified in the notice. The starting point is that the information or evidence must be re-submitted within six weeks of the date on which the notice is given, unless otherwise agreed in writing with the relevant mpa or the Welsh Ministers. Applicants, appellants and operators should note in particular here, that in cases where an extension of time has not been agreed in writing, the six week period runs from the date on which the notice is

given – not the date on which the notice is received by the applicant, appellant or operator.

277. If the further information or evidence incorporating the presentational changes required is not re-submitted by the date it is due, minerals development will be *automatically* suspended until every requirement imposed by or under the Regulations has been complied with.

278. Applicants and operators should note that where an application has been referred to the Welsh Ministers after a notice requiring presentational changes is given, but before the further information or evidence is re-submitted to the relevant mineral planning authority, the applicant or operator is required to re-submit the relevant information or evidence to the Welsh Ministers – not to the relevant mpa.

279. **Step 5.4: instruction to publish further information or evidence – action by mpas and the Welsh Ministers**: If mpas or the Welsh Ministers are satisfied with the form in which the further information or evidence is presented, then an mpa or the Welsh Ministers must instruct the applicant, appellant or operator in writing, to publish the further information or evidence in accordance with regulation 30. The written notification containing the instruction to publish must also identify any interested persons of whom the mpa or the Welsh Ministers may be aware, who are unlikely to become aware of the further information evidence by means of a site notice, and must, at the same time, give the applicant, appellant or operator written notification of the matters set out in paragraph 19 of Schedule 3, and state the number of copies of the further information or evidence which the mpa or the Welsh Ministers need in order to comply with their duties to send copies to the consultation bodies and to each other.

280. If an mpa is satisfied with the form in which the further information or evidence is first submitted, the starting point is that the mpa must instruct the applicant or operator to publish the information or evidence within three weeks of having received it. If an mpa is satisfied with the form in which the information or evidence is re-submitted (in response to a notice requiring presentational changes given by the mpa), the instruction to publish must be given by the mpa within three weeks of the information or evidence being re-submitted.

281. There is no discretion available to mpas to extend this three week period in cases where the authority has already instructed the applicant to publish an ES. If an mpa reasonably concludes therefore, that it will be unable to instruct the applicant to publish the information or evidence within three weeks of receiving it, the authority may wish to make use of the procedure under regulation 5 to request an extension of time from the Welsh Ministers.

282. As described at paragraph 276 above, there is a discretion available to mpas to defer instructing an applicant or operator to publish further information or evidence in cases where an mpa has not yet instructed the applicant to publish an ES. In such cases, the mpa is required to do so within three weeks of instructing the applicant to publish the ES. There is no further discretion to extend this three week period and consequently, the point in the preceding paragraph about the use of the procedure in regulation 5 is relevant here also.

283. The Welsh Ministers are required to instruct an applicant, appellant or operator to publish further information or evidence as soon as reasonably

practicable after receiving it, unless the applicant or appellant has not yet been instructed to publish the ES. In such cases, the Welsh Ministers are required to instruct the applicant, appellant or operator to publish the information or evidence as soon as reasonably practicable after instructing the applicant or appellant to publish the ES.

284. The notification to be given by mpas or the Welsh Ministers must-

(a) instruct the applicant, appellant or operator to publish notice of the further information or evidence in accordance with the requirements set out in regulation 30;

(b) specify the number of copies of the further information or evidence which is required to enable the mpa or the Welsh Ministers to provide copies to the consultation bodies and to each other;

(c) identify any interested person of whom the mpa or the Welsh Ministers are aware, who is unlikely to become aware of the relevant information or evidence by means of a site notice; and

(d) include the information specified in paragraph 19 of Schedule 3 which, in summary, will include the following-

(i) the date by which the documentary evidence of publication must be provided;

(ii) an explanation of the publicity requirements imposed by regulation 30;

(iii) an explanation of the documentary evidence which the applicant, appellant or operator is required by regulation 31 to submit;

(iv) that if the documentary evidence of publication is not submitted by the date specified, minerals development will automatically be suspended, apart from restoration and aftercare conditions;

(v) that the applicant, appellant or operator must provide the mpa or, as the case may be, the Welsh Ministers, with the number of copies of the further information or evidence specified in the notice within seven days of the date of the notice;

(vi) that the applicant, appellant or operator is required by regulation 33 to ensure that a reasonable number of copies of the further information or evidence are available at the address named in the notices which will be published or posed b the applicant, appellant or operator under regulation 30, as being the address at which copies may be obtained;

(vii) that regulation 34 entitles the applicant, appellant or operator to make a reasonable charge reflecting printing and distribution costs for a copy of any further information or evidence made available to a member of the public in consequence of the duty imposed on the applicant, appellant or operator by regulation 33;

(viii) that regulation 26 entitles the mpa or the Welsh Ministers to require the applicant or appellant or a relevant operator to provide further information; an explanation of what constitutes "further information"; the six week deadline for submission of further information if required (unless otherwise agreed in writing with the relevant mpa or the Welsh Ministers); the automatic suspension of minerals development (apart from restoration and aftercare conditions) which will engage if further information is not provided within the period allowed for doing so;

(ix) that regulation 27 entitles the mpa or the Welsh Ministers to require the applicant or appellant or a relevant operator to produce evidence to verify information provided by the applicant or appellant or operator, and an explanation of the information to which regulation 27 applies; the six week deadline for submission of evidence if required (unless otherwise agreed in writing with the relevant mpa or the Welsh Ministers); the automatic suspension of minerals development (apart from restoration and aftercare conditions) which will engage if evidence is not produced within the period allowed for doing so;

(x) that an automatic suspension of minerals development will remain in effect until every requirement imposed by or under the Regulations has been complied with; not only the requirement which gives rise to a suspension, but all subsequent requirements also;

(xi) that if minerals development remains suspended for a period of two years and any of the steps which are required to be taken by the applicant under the provisions mentioned in regulation 48(3) have yet to be taken, the mpa will be required to consider whether to make a prohibition order under Schedule 9 to the Act with respect to the ROMP development in question; and that for the purposes of that duty-

- a prohibition order may be made in relation to part of a site (in addition to the whole of a site);

- an mpa must assume that minerals development has permanently ceased where minerals development has been suspended for a period of two years and it appears to the authority that resumption of minerals development to any substantial extent is unlikely;

- an mpa must disregard minerals development which is suspended when considering the preceding question, such that that the question to be addressed is whether it appears to the authority that the resumption of authorised minerals development to any substantial extent is unlikely; and

- that a confirmed prohibition order can have effect to terminate planning permission for part of the minerals development to which it originally extended.

(xii) the right to challenge the notice and the time period for doing so.

285. Where an instruction to publish further information or evidence is given by an mpa or the Welsh Ministers, they are required to suspend their consideration of the application or appeal until the end of the consultation period; and they are not permitted to determine the application or appeal during the 21 days which follow.

286. Mpas and the Welsh Ministers must take such steps (other than posting site notices) as they consider most likely to bring the instruction to publish and the accompanying written notification to the attention of persons likely to be interested in the application. Mpas are also required to place copies on the register.

Step 6: Further information and evidence: publicity and consultation

287. Step 6 of the procedure sets the framework for consultation on further information and evidence. The onus is on applicants, appellants and operators to carry out the publicity requirements and to provide written confirmation to the relevant mpa or the Welsh Ministers that they have done so.

288. **Step 6.1: receipt of instruction to publish – action by applicants, appellants and operators**: An applicant, appellant or operator who receives an instruction to publish must take action in five respects –

(a) post a site notice;

(b) publish notice of the further information or evidence (which will also include the posting of a site notice);

(c) provide consultation copies of the further information or evidence to the relevant mpa or the Welsh Ministers;

(d) ensure that sufficient copies of the further information or evidence are available for inspection by members of the public, and

(e) submit documentary evidence of publication.

289. With respect to the posting of a site notice in connection with the instruction to publish, the applicant, appellant or operator must post a copy of the instruction to publish and the written notification received on the land within 14 days of the date of the notification, and must leave it in place for a period of at least 14 days. The copy must be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land. The obligation to post a site notice does not apply if an applicant, appellant or operator does not have, and is not reasonably able to acquire, the rights required to comply with that obligation.

290. The instruction to publish further information or evidence will have specified the date by which the documentary evidence of publication must be submitted to the mpa or the Welsh Ministers. The starting point is that that evidence

must be submitted by the applicant, appellant or operator within six weeks of the date on which the instruction to publish was given. The six week period can be extended by agreement with the relevant mpa or the Welsh Ministers. If the documentary evidence is not provided by the date it is due, minerals development will be suspended until every requirement imposed by or under the Regulations has been complied with.

291. The points made at paragraphs 227 and 228 concerning the approach to be taken by mpas to extending the six week deadline are relevant here also.

292. That an applicant, appellant or operator is required to submit documentary evidence of publication by the end of the six week period (or other period agreed in writing with the relevant mpa or the Welsh Ministers) means that the applicant, appellant or operator must carry out the publicity requirements imposed by the Regulations in good time to be able to do so. The following is a summary of the publicity-related activities which applicants, appellants and operators must undertake in order to comply with the publicity requirements (and consequently, in order to be able to comply with the requirement to submit documentary evidence that those requirements have been complied with, within the time period allowed for doing so). The requirement to post a site notice does not apply if the applicant, appellant or operator has not, and is not reasonably able to acquire, such rights as would enable the applicant or appellant to comply with those requirements (although in such circumstances, a certificate to confirm that fact will be required by the deadline):

(a) placing an advertisement in a local newspaper containing the details set out in regulation 30(1);

(b) posting a site notice which contains the information referred to in regulation 30(1) and which –

- must be easily visible to, and readably by, member of the public without going onto the land and which must be firmly fixed to an object on the land;
- must be left in place for at least 7 days in the 28 days which precede the date on which the documentary evidence of publication is submitted;
- includes notification that the last day on which the documents will be available for inspection must not be less than 21 days after date on which the notice is first posted; and

(c) serving notice of the details set out in regulation 30(1) on any person known to the recipient as being, or likely to be, affected by, or having an interest in the application, except that the latest date on which the documents will be available for inspection must not be less than 21 days after the date on which the notice is given to the person in question.

293. **Step 6.2: consultation copies of further information and evidence – action by applicants, appellants and operators**: Applicants, appellants and operators are required to provide copies of the further information or evidence to the relevant mpa or the Welsh Ministers; the number of copies required in any given case will be set out in the notice accompanying the instruction to

publish. Applicants, appellants and operators must provide the required number of copies free of charge within seven days of the date of that notice. These copies are required by mpas and the Welsh Ministers so that they can comply with the requirements imposed on them to provide copies to the consultation bodies and to each other. If an applicant, appellant or operator does not comply with the duty to provide copies of the further information or evidence within the time period allowed for doing so, minerals permission is not suspended. The Regulations are drafted in this way because the Welsh Ministers consider that to automatically suspend minerals development for a failure to provide copies of further information or evidence in circumstances where the relevant mpa or the Welsh Ministers will already have in their possession, at least one copy of the further information or evidence in question, would be a disproportionate response to the failure in question. The Welsh Ministers encourage applicants, appellants and operators to engage constructively with the EIA procedure and to provide copies to mpas and the Welsh Ministers within the seven day period.

294. The attention of mpas is drawn to the fact that the duty to provide copies of further information or evidence to the consultation bodies and to the Welsh Ministers is not dependant on copies having been provided for that purpose by the applicant. Thus, if an applicant refuses to provide the copies required, mpas will themselves need to make sufficient copies of the further information or evidence in question, in order to place themselves in a position to be able to comply with the duties imposed by regulation 32(2).

295. The instruction to publish will have been accompanied by notice of the requirement to ensure that a reasonable number of copies of the further information or evidence are made available to members of the public, and of the right conferred on applicants, appellants and operators, to make a charge reflecting printing and distribution costs, for making those copies available.

296. If an applicant, appellant or operator does not comply with the duty to ensure that a reasonable number of copies of the further information or evidence are available for inspection at the relevant address, minerals permission is not suspended. The Regulations are drafted in this way because the Welsh Ministers consider that to automatically suspend minerals development for a failure to provide a reasonable number of copies of further information or evidence in circumstances where the relevant mpa or the Welsh Ministers will already have in their possession, at least one copy of the further information or evidence in question, would be a disproportionate response to the failure in question. The Welsh Ministers urge applicants, appellants and operators to engage constructively with the EIA procedure and to provide a reasonable number of copies for inspection.

297. **Step 6.3: consultation copies of further information and evidence – action by mpas and the Welsh Ministers**: Within 14 days of giving an instruction to publish, mpas must -

(a) send two copies of the further information or evidence to the Welsh Ministers;

(b) send a copy of the further information or evidence to each of the consultation bodies, together with written notification stating that representations should be made in writing to the mpa within 28 days of the

date of the notice, unless otherwise agreed in writing with the relevant mpa.

298. The Welsh Ministers are required, as soon as reasonably practicable following the date on which they give an instruction to publish, to send a copy of the further information or evidence to the relevant mpa and to comply with the requirement mentioned at (b) above.

299. **Step 6.4: documentary evidence of publication – action by applicants, appellants and operators**: The instruction to publish will have been accompanied by written notification specifying the time period within which an applicant, appellant or operator must comply with the requirement to submit documentary evidence that the publicity requirements have been complied with. This means that, following the publication, service and, if applicable, posting, of the notices required, the applicant, appellant or operator must submit the documentary evidence specified in the Regulations to the relevant mpa or to the Welsh Ministers by the date specified in the notice. The documentary evidence which is required comprises, in summary, the following:-

(a) a certified copy of the notice published in the local newspaper;

(b) a certificate by or on behalf of the applicant, appellant or operator confirming either

(i) that the site notice required to be posted was posted in compliance with the relevant requirements and, if the notice was subsequently defaced or removed, that the applicant, appellant or operator took reasonable steps for its protection or replacement; or

(ii) that the applicant, appellant or operator, having taken reasonable steps to acquire the rights to do so, was unable to comply with the site posting requirements;

(c) a certified copy of any notice given to any person notified to the applicant, appellant or operator as likely to be affected by or to have an interest in the application.

300. If the documentary evidence is not submitted by the date it is due, minerals development will be suspended until the conditions to be attached to the permission are *finally determined*. Applicants, appellants and operators should note in particular here, that where an extension to the six week period for provision of the documentary evidence is not agreed, the six week period runs from the date on which the notice is *given* by the mpa or the Welsh Ministers – not the date on which the notice is received by the applicant, appellant or operator.

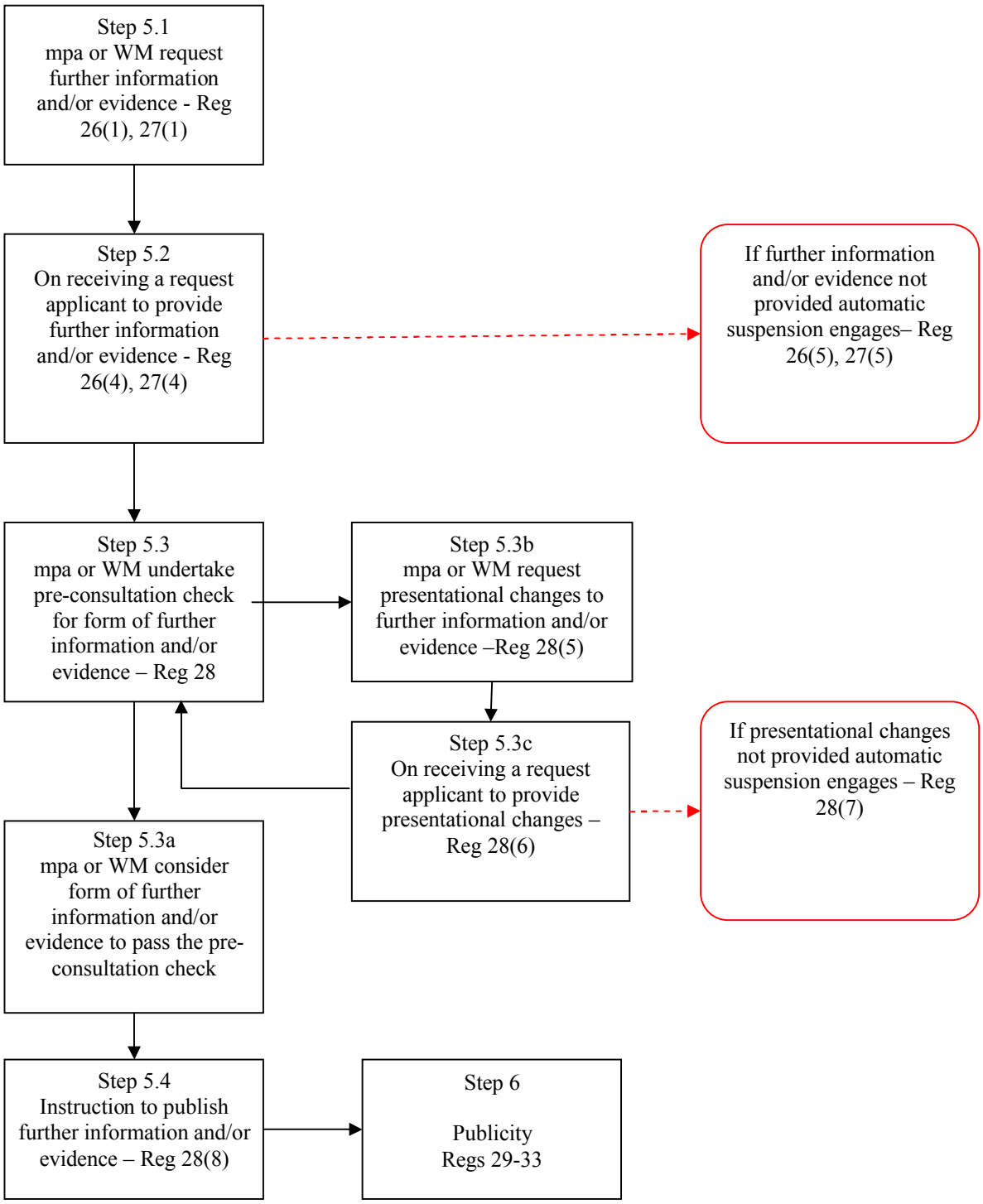
301. Applicants and operators should note that where an application has been referred to the Welsh Ministers after an instruction to publish has been given by the relevant mpa, but before the documentary evidence of publication has been submitted, the documentary evidence of publication must be provided to the Welsh Ministers – not to the relevant mpa.

302. The purpose of requiring the submission of documentary evidence of publication is to secure that the interested public are given early and effective

opportunities to participate in the EIA procedure. This, in turn, requires the public concerned to be afforded adequate notification of, and access to relevant information concerning the proposed ROMP development including, amongst other matters, further information and evidence upon which applicants and appellants intend to rely.

303. It is a criminal offence to intentionally or recklessly issue a certificate purporting to comply with the certification requirements in relation to the posting of site notices. A person is liable on summary conviction to a fine not exceeding level 3 (currently £1,000) on the standard scale. .

Fig 5: Further information and evidence



Other relevant information: publicity requirements

304. In any particular case, there may be information which relates to the main effects of the EIA development, or which is of material relevance to the determination of conditions to be attached to the permission which is not contained in the ES or in any further information or evidence which the applicant, appellant or any relevant operator is required to provide. Information of this type may take the form of reports or advice issued to mpas or to the Welsh Ministers, or information submitted by an applicant or appellant otherwise than in an ES or otherwise than in response to requests for further information or evidence. Where information of this kind relates to the main effects of the EIA development or where it is relevant to the determination of conditions to be attached to the permission, the EIA Directive requires that it be made available to the public. Regulation 35 is addressed to this end.

305. The procedure on receipt of information of the kind mentioned above differs to the procedure which engages on receipt of further information or evidence; a test of relevancy is applied to this kind of information and if the relevancy threshold is met, the publicity requirements summarised below ensue. There is no test applied in respect of the content or form of this type of information however, because it will, by its nature, be information provided voluntarily (as it would otherwise be contained in a mandatory ES, or would be the subject of a mandatory request for further information or evidence) and consequently, no requirements as to the form or content of that information will have been imposed against which the information could be assessed.

306. Regulation 35 applies to reports, advice and **any other information** which is provided to mpas and the Welsh Ministers on or after the date on which the Regulations come into force. Regulation 35 also applies to reports and advice (but not any other information) which were provided to mpas and the Welsh Ministers before the date on which the Regulations come into force. This is because the stalled cases, by definition, have been ongoing for some considerable time and it may be the case that reports or advice which were previously commissioned or received by mpas or the Welsh Ministers remain relevant to the effects of the development or to the determination of conditions. If advice or reports of this kind exist in any particular case, they should properly be made available to the public as part of the EIA procedure.

307. Regulation 35 does not apply to any other information received before the date on which the Regulations come into force, because given the manner in which "any other information[20]" is defined , information of that kind which was provided prior to the Regulations coming into force will either be contained in the ES (because mpas or the Welsh Ministers, having previously received the information, will have taken it into account in reaching the relevant scoping decision), or will be the subject of a mandatory request for further information or evidence.

308. Where reports, advice or any other information meet the relevancy threshold, they are collectively referred to in regulation 35 as "other relevant information" (in order to distinguish this type of information from the mandatory type which forms the subject of ESs, and requests for further information and evidence).

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20 "Any other information" means any other substantive information as per paragraphs 286 and 288 but not information contained in an ES or provided as further information and/or evidence

309. Where other relevant information is published by mpas or the Welsh Ministers under regulation 35, mpas and the Welsh Ministers must suspend their consideration of the stalled review in question for a period of 21 days following the date on which the last notice was published, served, sent or posted (if applicable).

310. Where any report, advice or any other information was provided to an mpa prior to the Regulations coming into force in connection with an EIA application which is referred to the Welsh Ministers before the MPA has instructed the applicant to publish the ES, the mpa is not required to carry out the relevancy test in relation to it but instead, must provide that report, advice or any other information to the Welsh Ministers. By virtue of regulation 35(9), the obligation to carry out the relevancy test and any resulting publicity requirements is borne by the Welsh Ministers.

311. relevancy test not met – action by mpas and the Welsh Ministers: If, having considered the report, advice or any other information, mpas or the Welsh Ministers are of the opinion that it does not relate to the main effects of the EIA development or that it is not of material relevance to the determination of conditions to which the planning permission is to be subject, no further steps under regulation 35 need be taken in relation to it.

312. relevancy test met – action by mpas and the Welsh Ministers: If, having considered the report, advice or any other information, mpas or the Welsh Ministers are of the opinion that it relates to the main effects of the EIA development or that it is of material relevance to the determination of conditions to which the planning permission is to be subject, they are required to publish (what is now) the "other relevant information".

313. If the other relevant information is information which has been provided by an applicant or appellant ("any other information") mpas or the Welsh Ministers must also notify the applicant or appellant in writing of the duty to provide consultation copies of that information free of charge. mpas and the Welsh Ministers must also notify the applicant or appellant in writing of the duty to ensure that sufficient copies of the other relevant information are available at the address given in the notice published by the mpa, as the address at which copies may be obtained, and of the right to make a charge reflecting printing and distribution costs, for copies made available in this way.

314. The publicity requirements are similar to those for environmental statements and relevant information or evidence, except that the publicity is undertaken by the relevant mpa or the Welsh Ministers, not by the applicant or appellant. The requirements are, in summary-

(a) placing an advertisement in a local newspaper containing the details set out in regulation 36(1);

(b) posting a site notice which contains the information just mentioned, and which –

(i) must be easily visible to, and readably by, member of the public without going onto the land and which must be firmly fixed to an object on the land;

(ii) must be left in place for at least 14 days;

(iii) includes notification that the last day on which the documents will be available for inspection must not be less than 21 days after date on which the notice is first posted; and

(c) serving notice of the details set out in regulation 36(2) on any person known to the authority or the Welsh Ministers as being, or likely to be, affected by, or having an interest in the application, except that the latest date on which the documents will be available for inspection must not be less than 21 days after the date on which the notice is given to the person in question.

315. Where the other relevant information is provided to an mpa on or after the Regulations come into force, mpas must comply with the publicity requirements within three weeks of it being received.

316. There is no discretion available to mpas to extend this three week period in cases where the authority has already instructed the applicant to publish an ES. If an mpa reasonably concludes therefore, that it will be unable to instruct the applicant to publish the other relevant information within three weeks of receiving it, the authority may wish to make use of the procedure under regulation 5 to request an extension of time from the Welsh Ministers.

317. There is a discretion available to mpas to defer instructing an applicant or operator to publish other relevant information received on or after the Regulations come into force in cases where an mpa has not yet instructed the applicant to publish an ES. In such cases, the mpa is required to do so within three weeks of instructing the applicant to publish the ES. There is no further discretion to extend this three week period and consequently, the point in the preceding paragraph about the use of the procedure in regulation 5 is relevant here also.

318. Where other relevant information comprising a report or advice was provided to an mpa prior to the Regulations coming into force, mpas are required to comply with the publicity requirements within three weeks of having instructed the applicant to publish the ES. There is no discretion to extend this three week period and consequently, the point at paragraph 298 about the use of the procedure in regulation 5 is relevant here also. .

319. Where other relevant information is provided to the Welsh Ministers on or after the Regulations come into force, they are required to comply with the publicity requirements as soon as reasonably practicable following receipt of the other relevant information in question in cases where the applicant or appellant has already been instructed to publish the ES; if the applicant or appellant has not yet been instructed to publish the ES, the Welsh Ministers are required to comply with the publicity requirements or as soon as reasonably practicable after having instructed an applicant or appellant to publish the ES. Where other relevant information comprising a report or advice was provided to the Welsh Ministers prior to the Regulations coming into force, regulation 35(11) requires the Welsh Ministers to comply with the publication requirements as soon as reasonably practicable after having instructed an applicant or appellant to publish the ES.

320. consultation copies of other relevant information – action by applicants and appellants: If other relevant information is information which falls within the definition of "any other information" – that is, any other substantive information provided by an applicant or appellant which is relevant to the determination of the EIA application, other than screening, scoping or further information or evidence - the applicant or appellant is required to provide copies of that information for the purposes of consultation and public participation. The number of copies required for the purposes of consultation with the consultation bodies, and for the purposes of the duty imposed on mpas and the Welsh Ministers to provide copies to each other in any given case, will be set out in the notice given to the applicant or appellant under regulation 35(4) or (5), referred to at paragraph 295 above.

321. Applicants and appellants must provide the required number of copies free of charge within seven days of the date of that notice. If an applicant or appellant does not comply with the duty to provide copies of the relevant information or evidence within the time period allowed for doing so, minerals permission is not suspended. The Regulations are drafted in this way because the Welsh Ministers consider that to automatically suspend minerals development for a failure to provide copies of relevant information or evidence in circumstances where the relevant mpa or the Welsh Ministers will already have in their possession, at least one copy of the relevant information or evidence in question, would be a disproportionate response to the failure in question. The Welsh Ministers encourage applicants and appellants to engage constructively with the EIA procedure and to provide copies to mpas and the Welsh Minister within the seven day period.

322. The attention of mpas is drawn to the fact that the duty to provide copies of relevant information or evidence to the consultation bodies and to the Welsh Ministers is not dependant on copies having been provided for that purpose by the applicant. Thus, if an applicant refuses to provide the copies required, mpas will themselves need to make sufficient copies of the relevant information or evidence in question, in order to place themselves in a position to be able to comply with the duties imposed by regulation 36(2).

323. The written notification given to applicants and appellants will also have informed them of the requirement to ensure that a reasonable number of copies of any other relevant information supplied by them are available for inspection at the address given in that behalf, in the notices published, served and posted under regulation 36; and of the right to make a charge reflecting printing and distribution costs, for any other relevant information made available in this way.

324. If an applicant or appellant does not comply with the duty to ensure that a reasonable number of copies of the relevant information or evidence are available for inspection at the relevant address, minerals permission is not suspended. The Regulations are drafted in this way because the Welsh Ministers consider that to automatically suspend minerals development for a failure to provide a reasonable number of copies of other relevant information in circumstances where the relevant mpa or the Welsh Ministers will already have in their possession, at least one copy of the other relevant information in question, would be a disproportionate response to the failure in question. The Welsh Ministers encourage applicants and appellants to engage constructively with the EIA procedure and to provide a reasonable number of copies for inspection.

325. consultation copies of other relevant information – action by mpas and the Welsh Ministers: Within 14 days of publishing notice of the other relevant information, mpas must –

(a) send two copies of the other relevant information to the Welsh Ministers;

(b) send a copy of the other relevant information to each of the consultation bodies, together with written notification stating that representations should be made in writing to the mpa within 21 days of the date of the notice, unless otherwise agreed in writing with the relevant mpa.

326. The Welsh Ministers are required, as soon as reasonably practicable following the date on which they publish notice of other relevant information, to send a copy of that information to the relevant mpa and to comply with the requirement mentioned at (b) above.

327. Where other relevant information is published by mpas or the Welsh Ministers under regulation 36, mpas and the Welsh Ministers must suspend their consideration of the stalled review in question for a period of 21 days following the date on which the last notice was published, served, sent or posted (if applicable).

Step 7: Determination of conditions

328. Schedule 2 to the 1991 Act and Schedules 13 and 14 to the 1995 Act provide that an mpa is deemed to have determined that a permission is to be subject to the conditions proposed by an applicant in its review application, if the authority has not notified its determination within three months of the application being received (or within such longer period as may be agreed in writing between the applicant and the authority). Because an EIA application cannot be determined without consideration of the environmental information, the deeming provisions of the 1991 and 1995 Acts are disapplied by the Regulations (regulation 39).

329. The deeming provisions of the 1991 and 1995 Acts are not disapplied in relation to any undetermined ROMP application which is negatively screened by the Welsh Ministers (in response to a request for a screening direction made within three weeks of the Regulations coming into force or, exceptionally, made of their own volition under regulation 9). In such cases however, the three month period runs from the date on which a negative screening direction is issued by the Welsh Ministers (regulation 39(2).

330. Unless otherwise agreed in writing between the relevant mpa and the applicant, an mpa must notify an applicant of its determination of an EIA application within sixteen weeks of the date falling 21 days after the date on which the authority has confirmation that the ES and any relevant information or evidence has been published by the applicant; or, if later, within sixteen weeks of the date falling 21 days after the date on which the authority publishes any other relevant information under regulation 36.

Step 8: Appeals against non-determination

331. Where an mpa has not given notice of its determination of an application within the sixteen week (or other agreed) period allowed for doing so, an applicant can appeal to the Welsh Ministers. An appeal must be made within six months of the expiry of the sixteen week (or other agreed) period in question.

Section 5
Sanctions and enforcement

Suspension of minerals development

332. Guidance issued to accompany the introduction of the mineral conditions review provision in the 1995 Act[21] encouraged potential applicants for review of minerals conditions to co-ordinate with each other with a view to submitting a single application. The Welsh Ministers are aware that at some sites in multiple operation, where permissions are shared, and for a variety of reasons, separate applications have been submitted for review of the conditions, and environmental information has been requested from each applicant relating to their respective parts of the site.

333. Mineral sites are often subject to complicated patterns of ownership (of both the land and mineral(s)) and operation. Sites may be the subject of a single mineral permission (and sometimes these single permissions apply to several operationally distinct quarries) or several mineral permissions (and sometimes, for sites in multiple operation, several operators may benefit from more than one permission). Where a site is subject to multiple ownership or operation or permissions, operators have much to gain from co-operating with each other to provide the information required to produce a single ES for the whole site, as required by the 1995 Act.

Operators who are not applicants or appellants

334. The requirements to submit information and to provide an ES are imposed by the Regulations, on applicants and appellants. Where an application has been made by an individual operator which relates to one or more permissions under which all of the minerals development is being carried on by the applicant; or for sites in multiple operation where each operator has submitted a separate application with respect to the development being carried on by them at the site in question, the obligations under the Regulations are, as a matter of fact, imposed on the persons who made the application or applications. This means that mpas and the Welsh Ministers will be able to require those applicants individually, to provide information or evidence and, in the latter case, in effect, to collectively produce an ES.

335. Where operators have not submitted an application, the obligations imposed on applicants and appellants do not apply to those operators.

336. As soon as the necessary information has been compiled and consulted upon, appropriate and up to date conditions may be determined. Compliance with up-to-date operating conditions will contribute to protecting the environment and to maintaining positive relationships with local communities.

337. It is essential that all environmental information which is required to properly consider the likely environmental effects of development is provided as promptly as possible so as to enable expeditious progress to be made towards the final resolution of all stalled reviews. This is particularly so, given

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21 MPG14 Environment Act 1995 - review of mineral planning permissions which is available on the DCLG website at: http://www.communities.gov.uk/publications/planningandbuilding/mineralsplanningguidance12

the considerable amount of time which has elapsed during which operations have continued in these cases, without up to date conditions designed to protect the environment. For these reasons, and for the hopefully few cases where applicants or appellants do not constructively engage with the EIA procedure, the Regulations impose stringent deadlines within which substantive action must be taken by applicants and appellants, and impose sanctions for all failures to take that substantive action within the time periods allowed for doing so. The Welsh Ministers consider that the sanctions imposed by the Regulations strike a fair balance between the interests of individual applicants and appellants and the general public interest; and that the sanctions are proportionate in pursuit of the legitimate aim of protecting the environment. The Welsh Ministers encourage applicants and appellants to constructively engage with the EIA procedure so as to bring to an end the delay in determining appropriate and up to date conditions in the stalled review cases.

338. If applicants, appellants and other operators adopt a positive and pro-active approach to complying with their obligations under the Regulations, suspension of minerals development can be avoided.

339. The attention of applicants and appellants in particular, is drawn to the following points-

(a) failure to take a step within the time period allowed for doing so will result in the ***automatic*** suspension of minerals development. This means that the relevant mineral planning authority and the Welsh Ministers have no power under the Regulations to defer the engagement of an automatic suspension, nor to reverse it;

(b) once suspension of minerals development automatically engages under the Regulations, *any* development consisting of the winning and working of minerals or involving the depositing of mineral waste which is authorised by the planning permission in question, will be unauthorised development against which the relevant mineral planning authority or the Welsh Ministers will be entitled to take enforcement action under the 1990 Act;

(c) because a suspension of minerals development has effect in relation to *any* minerals development authorised by the planning permission in question, minerals development being carried on by persons other than the applicant or appellant under authority of the same planning permission, will also be unauthorised development;

(d) any restoration and aftercare conditions attached to the permission are unaffected by a suspension of minerals development, because it is only the authority to carry out minerals development which is suspended, not the entirety of the planning permission;

(e) the time period within which any substantive action must be taken by applicants and appellants is either the time period specified for that step in the Regulations or, if applicable, any alternative time period agreed in writing with the relevant mpa or the Welsh Ministers;

(f) minerals development will ***remain suspended*** until every requirement imposed by or under the Regulations has been complied with; not only the

requirement which gives rise to a suspension, but all subsequent requirements also

(g) once minerals development has been suspended, nothing other than the final determination of conditions to be attached to the permission can 'un-suspend' minerals development under the Regulations;

(h) if minerals development remains suspended for a period of two years, and the applicant or appellant or, as the case may be, any relevant operator, has yet to take one or more of the substantive steps required by the Regulations, the relevant mpa will be *required* to exercise its functions under paragraph 3 of Schedule 9 to the 1990 Act (prohibition orders). The substantive steps in question are those set out in regulation 48(3), summarised below. The deadlines mentioned below are the default deadlines imposed by the Regulations which can be extended by agreement in writing with the relevant mpa or the Welsh Ministers. Where an extension is agreed in writing, the relevant deadline will be that which is the subject of the written agreement in any particular case. The substantive steps are, in summary:

(i) the submission of screening information within three weeks of the date of on which that information is requested in writing under regulation 11(4), in cases where an applicant or appellant exercises the right to request a screening direction within three weeks of the date on which the Regulations come into force;

(ii) the submission of scoping information to a relevant mpa within three weeks of the date of on which that information is requested under regulation 12(2);

(iii) the submission of scoping information to the Welsh Ministers within three weeks of the date on which that information is requested under regulation 13(4), in cases where an applicant exercises the right to request the Welsh Ministers to make a scoping direction where the relevant mpa has failed to notify the applicant of its scoping opinion within the relevant six week period;

(iv) the submission of scoping information to the Welsh Ministers within three weeks of the date on which that information is requested under regulation 14(5), in cases where applications or appeals are before the Welsh Ministers for determination (whether referred or appealed before the date on which the Regulations come into force, or after that date but before a scoping decision has yet been made);

(v) the submission of scoping information to the Welsh Ministers within three weeks of the date on which that information is requested under regulation 15(5), in cases where an application is referred to the Welsh Ministers after a scoping decision has already been made;

(vi) the submission of a draft ES within 16 weeks of the date on which the relevant scoping opinion or direction is notified;

(vii) the submission of information which is missing from an ES within three weeks of the date on which that information is requested under regulation 18(6);

(viii) the submission of a further draft ES incorporating the required presentational changes within three weeks of the date on which those changes are requested under regulation 18(14);

(ix) the submission of documentary evidence of publication within six weeks of the date on which an instruction to publish an ES is given pursuant to regulation 18(19);

(x) the submission of further information within six weeks of the date on which that information is requested under regulation 26(1);

(xi) the submission of evidence within six weeks of the date on which that evidence is requested under regulation 27(1);

(xii) the re-submission of further information or evidence incorporating the required changes within three weeks of the date on which those changes are requested under regulation 28(5);

(xiii) the submission of documentary evidence of publication of further information or evidence under regulation 29.

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Enforcement against continued working in breach of suspension of minerals development

340. Any continued working following automatic suspension of minerals development constitutes a breach of planning control. Mpas have discretionary powers under Part VII of the 1990 Act to take enforcement action against a breach of planning control (see circular 24/97[22]).

341. Where minerals development is automatically suspended under the Regulations, the planning permission(s) cease to authorise *any* minerals development. Thus, technically speaking, the discretionary enforcement powers under Part VII of the 1990 Act could be used to enforce against any minerals development being carried out by any operator, whether or not that operator is an applicant or appellant, and whether or not that operator had submitted the information required by the Regulations in respect of the development being carried on by the operator in question. Failure to comply with an enforcement notice issued under Part VII of the 1990 Act constitutes a criminal offence.

342. Where mpas are considering taking enforcement action under Part VII of the 1990 Act in relation to minerals development which is unauthorised development by virtue of a suspension of minerals development engaged under the Regulations, mpas will need to consider carefully the human rights consequences of any enforcement action considered by them to be necessary where either information has not been provided or environmental harm is being caused by continued working of the site in accordance with the existing operating conditions. In particular, in order to guard against an unjustified interference with an operator's rights under Article 1 of the First Protocol to the European Convention on Human Rights, mpas will need to satisfy themselves that only culpable operators who have not supplied the relevant information or

22 Circular 24/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirements

whose operations are causing environmental harm are the subject of any enforcement action which is both necessary and proportionate.

Further sanctions: suspension and prohibition orders

343. As mentioned above, the Welsh Ministers are not aware that the suspension sanction introduced by the 2000 Regulations has ever engaged in respect of a site classified as active. The Welsh Ministers hope that the sanction will have a similar deterrent effect as introduced for the stalled cases, and that operators will approach the EIA procedure constructively so as to avoid the sanction being triggered. The Welsh Ministers also hope that the suspension sanction, if triggered in the future, will be effective in encouraging the provision of any outstanding information without further delay. The Welsh Ministers acknowledge however, that automatic suspension by itself could potentially result in the indefinite suspension of minerals development at sites, and that this would cause uncertainty, not least for local communities, over the future of the site and may preclude action being taken to remedy any environmental damage caused by the suspension.

Suspension orders

344. In the unlikely event that the information required is still not forthcoming following automatic suspension, mpas already have powers to make suspension orders which could be used to address any environmental damage resulting from a suspension of operations.

345. The Regulations make no changes to the suspension order provisions, which remain discretionary.

346. Mpas will wish to keep the condition of any site in automatic suspension under review. Where mineral operations have been suspended for a period of 12 months and the required information has still not been provided, mpas may consider it appropriate to make a suspension order.

347. Paragraph 5 of Schedule 9 to the 1990 Act sets out the powers of mpas to make suspension orders, providing the following criteria are met:

(a) that no winning and working of minerals or depositing of mineral waste has occurred to any substantial extent at the site for at least 12 months;

(b) it appears to the mpa on the available evidence that a resumption of such development is likely.

348. It is likely that an mpa would only exercise its discretion to make an order where it considered that there were immediate site management problems to be confronted. Suspension orders may require measures to be taken to preserve the amenities of the area, to protect the area from damage and to prevent any deterioration in the condition of the land. The making of such orders where appropriate, would provide a temporary respite until up-to-date conditions are finally determined when minerals development could be resumed.

349. Further information on the criteria fro making suspension orders, the procedure for making and reviewing them, the procedure for their confirmation

by the Welsh Ministers and the extent of any compensation which may be payable on their confirmation is contained in *Minerals Planning Guidance 4: The Review of Mineral Working Sites (DOE/WO) 1988*[23] and the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997[24]. See also paragraphs 341 to 344 below which offer informal advice on the scope of compensation liability on the confirmation of suspension or prohibition orders.

350. In considering whether it would be appropriate to make a suspension order to remedy problems at any particular site, mpas should keep in close contact with the operator on the timescale for the provision of the outstanding information and also bear in mind that such orders presume that suspension is temporary and that the resumption of development is likely. It may be, for example, that a suspension order is not appropriate where an operator is placed to provide the outstanding information before any order could be confirmed.

Prohibition orders

351. *Minerals Planning Policy Wales*[25] encourages the reclamation of land affected by mineral working at the earliest opportunity. The making of prohibition orders where the automatic suspension sanction is triggered would prevent the land falling into long term decay by enabling an mpa to impose conditions to alter or remove plant and machinery, to remove or alleviate injury to amenity, to comply with any conditions to which the minerals development is subject for the restoration and aftercare of the site.

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352. The Welsh Ministers anticipate that automatic suspension is likely to be triggered only very rarely. They also anticipate that the likelihood of minerals development remaining suspended for a period of two years for want of information is even more remote. However, the Welsh Ministers consider that there is a need to ensure, for the rare cases where the suspension sanction might be triggered, that it does not result in indefinite suspension of minerals development with the consequential environmental problems that that may cause. The Regulations therefore impose a duty on mpas to consider whether to make a prohibition order under paragraph 3 of Schedule 9 to the 1990 Act where minerals development has remained in a state of automatic suspension for a period of two years and any of the steps mentioned at paragraph 320 have yet to be taken by the applicant, appellant or a relevant operator.

353. The prohibition order powers under Schedule 9 to the 1990 Act are such that a prohibition order can only be made where it appears to an mpa that (amongst other matters), winning and working or depositing has permanently ceased; and paragraph 3(2) of Schedule 9 sets a minimum threshold below which an mpa is not entitled to assume that minerals development has permanently ceased. The modifications made to the prohibition order powers in Schedule 9 to the 1990 Act for the purposes of the stalled cases mean-

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23 Minerals Planning Guidance 4: Revocation, Modification, Discontinuance, Prohibition and Suspension Orders 1997 has been issued in England and is available on the DCLG website http://www.communities.gov.uk/publications/planningandbuilding/mineralsplanningguidance3

24 Available at: http://www.opsi.gov.uk/si/si1997/19971111.htm

25 Minerals Planning Policy Wales 2000; Available on the Welsh Assembly Government Website at http://wales.gov.uk/topics/planning/policy/minerals/mineralsplanning?lang=en

(a) that minerals development which has ceased to be authorised by virtue of having been the subject of an automatic suspension of minerals development under the Regulations does not count as "winning and working or depositing" for the purposes of the minimum threshold; and

(b) that an mpa must assume that winning and working or depositing has permanently ceased where the conditions in paragraph 3(2)(a) and (b) are met.

354. This in turn, means-

(a) that the question to be considered by mpas under paragraph 3(2)(a) of Schedule 9 is not whether *any* winning and working or depositing has occurred to any substantial extent at the site for at least two years, but whether any winning and working or depositing *which has not been suspended*, has occurred to any substantial extent at the site for a period of at least two years; and

(b) that the question to be considered by mpas under paragraph 3(2)(b) of Schedule 9 is not whether, on the evidence available to them at the time they make the order, the resumption of *any* winning and working or depositing to any substantial extent at the site is unlikely, but whether the resumption to any substantial extent at the site of winning and working or depositing *which is not suspended,* is unlikely.

355. Thus, the potential to avoid a prohibition order by continuing to develop unlawfully in breach of a suspension of minerals development is removed, and the ability of mpas to make prohibition orders in such cases is not undermined.

356. In addition to imposing to the modifications just mentioned, the Regulations make two further modifications to the prohibition order powers in Schedule 9.

357. The first of these further modifications concerns the scope of the powers which can now be used in relation to part of a site in the same way that they can be used in relation to the whole site. This modification is intended to address the fact that there may be complex patterns of mineral ownership and operation on some sites and only one or some of the operators on sites in multiple operation may fail to provide the information required. This modification means that an mpa may, where appropriate, prohibit the resumption of that part of the minerals development authorised by the mineral permission(s) which apply to the particular operators who have failed to provide the necessary information. This may be the applicant or appellant, or it may be an operator which is not the applicant or appellant (where for example, information is required in relation to operations being carried on by an operator other than the applicant or appellant, and the other operator in question refuses to provide that information, or to permit the applicant or appellant the rights to enable it to do so). This means that prohibition order powers can now be used in appropriate cases, to target those operators which fail to provide the information required to assess the likely environmental effects of the development, without unfairly penalising those operators which have provided all of the information which can reasonably be required of them.

358. In deciding the parts of a mineral site on which to focus a prohibition order, mpas will again want to consider very carefully their obligation to have regard to the requirements of the European Convention on Human Rights (see paragraph 323 above).

359. Other than the modifications above, there is no change to the criteria for making, and the procedure for confirming, prohibition orders. The criteria and procedures and the extent of any compensation which may be payable on confirmation of an order is contained in MPG4(some provisions have been amended in later legislation see footnotes[22, 23]). Every prohibition order must be submitted to the Welsh Ministers for confirmation. Owners and occupiers of the land or mineral and anyone else affected by the order may make representations to the Welsh Ministers which will be taken into account before a decision is taken whether or not to confirm the order. The Welsh Ministers will need to base a decision on whether or not to confirm an order on all material considerations. These will include whether there is a reasonable excuse for the continuing delay in providing the necessary information and whether an operator who has provided all the information that could reasonably be requested of that operator could be affected by the order.

360. If the answer to either of these questions is positive, the order is unlikely to be confirmed.

Compensation liability on confirmation of suspension or prohibition orders

361. MPG4 (some provisions have been amended in later legislation see footnotes[22, 23]) explains the categories of costs which may be the subject of a compensation claim when certain orders, including suspension and prohibition orders, are confirmed by the Welsh Ministers. The amount of compensation which may be claimed from mpas in these circumstances is prescribed by section 115 of the 1990 Act, as modified by the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997 (the 1997 Regulations). Regulation 6 of the 1997 Regulations provides that the following values and costs will be excluded from any claim for compensation for the costs of complying with suspension orders which have been confirmed by the Welsh Ministers:

(a) the value of any mineral in, on or under the site which cannot be won or worked;

(b) the value of any mineral waste which cannot be deposited; or

(c) the value of any void space which cannot be filled.

362. The final amount of any compensation payable will be reduced by £7,800 [22 23]. Regulation 5 of the 1997 Regulations[23] provides that the values listed in the three bullet points above, together with the cost of complying with any restoration or aftercare condition (either existing or imposed when the order is confirmed) and £7,800 will be excluded from any claim for compensation for the costs of complying with prohibition orders which have been confirmed by the Welsh Ministers.

363. The exclusions from compensation costs which are effected by the 1997 Regulations do not apply where a prohibition order is made within five years of a previous prohibition, discontinuance or modification order having been made in relation to the same land. Without more therefore, the effect of the duty imposed on mpas to consider whether to make a prohibition order in relation to suspended minerals development could be to require an mpa to do so within five years of having made another order in relation to the same land. Were this to be the case, an inadvertent effect of the Regulations could be to expose mpas to significant compensation liability on the one hand, or a potential challenge to a decision not to make a prohibition order on the other. A further effect could therefore also be inadvertently to 'reward' non-compliance with the EIA regime, by providing those whose failure has given rise to suspension either higher compensation, or grounds for challenge.

364. For all of these reasons the Regulations make express provision so that they do not have effect to require an mpa to make a prohibition order within five years of having made a previous order in relation to the same land.

365. Definitions of restoration and aftercare conditions are contained in paragraph 2 of Schedule 5 to the 1990 Act. A restoration condition is defined as: "…a condition requiring that after operations for the winning and working of minerals have been completed, the site shall be restored by the use of any or all of the following, namely, subsoil, topsoil and soil-making material…". The interpretation of legislation is a matter for the courts. In addition, the size of any potential compensation award will vary according to the particular circumstances at each mineral site, and according to the terms of the restoration and aftercare conditions applying to that site. However, the Welsh Assembly Government's informal view is that the cost of complying with any restoration condition will include the costs of the works necessary to get the site into a condition ready for the use of any subsoil, topsoil or soil-making material.

366. It is the Government's informal view that the intention of the compensation legislation in the 1990 Act, as modified by the 1997 Regulations, was to ensure that mineral operators pay for the restoration and aftercare of mineral sites following the cessation of mineral development. In consequence, the Government's informal view is that the compensation liability attached to both suspension and prohibition orders is likely to be relatively small.

Appendix A

Partial Regulatory Impact Assessment

A1 A partial Regulatory Appraisal (RA) was included as part of both consultation exercises detailed in 6 above. Although no specific responses were received on the RA, the assessment has been refined on the basis of the overall consultation responses received.

A2 The Welsh Ministers are firmly of the view that it is unreasonable for reviews of conditions to be delayed, in some cases for a considerable number of years Delays at active mineral sites mean that mineral operations are continuing under old permissions with few, if any, conditions to mitigate the environmental impacts of mineral working, contrary to the objectives of the legislation introduced in the 1990s and subsequent clarification that the EIA Directive should be applied to these reviews. This has an unacceptable impact on local environments and communities and is unfair to mineral operators at other sites who have produced the requested environmental information voluntarily.

A3 It is essential that all environmental information which is required to properly consider the likely environmental effects of development is provided as promptly as possible so as to enable expeditious progress to be made towards the final resolution of all stalled reviews. The principle of advance warning and transparency of consequences is intended to promote compliance with the Regulations, rather than the imposition of sanctions. This is particularly so, given the considerable amount of time which has elapsed during which operations have continued in these cases, without up to date conditions designed to protect the environment. For these reasons, and for the hopefully few cases where applicants, appellants or operators do not constructively engage with the EIA procedure, the Regulations impose stringent deadlines within which substantive action must be taken by applicants and appellants, and impose sanctions for all failures to take that substantive action within the time periods allowed for doing so. The Welsh Ministers consider that the sanctions imposed by the Regulations strike a fair balance between the interests of individual applicants, appellants and operators and the general public interest; and that the sanctions are proportionate in pursuit of the legitimate aim of protecting the environment. The Welsh Ministers encourage applicants and appellants to constructively engage with the EIA procedure so as to bring to an end the delay in determining appropriate and up to date conditions in the stalled review cases.

A4 The Welsh Ministers are also of the view that where operations at a site are suspended for failure on the part of operators to provide the environmental information required to progress their case in accordance with the obligations imposed by the EIA Directive, the continuing validity of the associated mineral permissions or consents (until, by default, 2042) is unacceptable. The Regulations therefore introduce a requirement for mpas to consider whether to make prohibition orders under paragraph 3 of Schedule 9 to the 1990 Act where a suspension engaged under the regulations continues in effect for a period of two years (except for restoration and aftercare conditions) and it appears to the mineral planning authority that resumption of lawful minerals development to any substantial extent is unlikely. Where there is more than one operator using the same mineral permission, the regulations enable

prohibition orders to be focused solely on the non-compliant operator who has failed to provide environmental information required to enable the mpa to determine the application.

Options

Option 1: 'Do nothing'/ voluntary provision of the environmental information

A5 Continued non-application of the EIA Directive in respect of this small number of reviews has resulted in infraction proceedings by the European Commission and the ECJ has found the UK to have failed to comply with its obligations under the EIA Directive. This option will therefore ultimately, and certainly result in the European Court imposing substantial lump sum and daily fines on the UK Government until such time as the breach is remedied. These fines can amount to several million pounds. Additionally, continued non-transposition may provoke challenges in the UK courts.

A6 The Welsh Assembly Government has written to operators and owners of sites where reviews are stalled encouraging them for a final time to provide the required environmental information voluntarily. In addition, the British Aggregates Association and the Minerals Products Association (formerly the Quarry Products Association) have sought to encourage those of the operators who are members of the associations and who have not been prepared to provide the relevant information to do so as soon as possible voluntarily. It was hoped that this encouragement would result in progress of the reviews stalled simply because the operators are not prepared to provide the necessary information. However, it is clear that this voluntary approach has not been successful except in one or two cases and the majority of cases remain stalled.

Option 2: Regulations to bring forward periodic reviews of conditions where initial reviews are 'stalled'

A7 It had initially been the intention to deal with cases which are stalled for want of the provision of the necessary environmental information by use of powers in Schedule 14 as amended by the Planning and Compulsory Purchase Act 2004 to bring forward the date of the first periodic (15 year) review of conditions at the relevant sites and so subject them to EIA according to the EIA Regulations 1999, as amended, with the sanction of suspension where the necessary information was not provided within a specified period. This option could, because of the more generous compensation provisions for periodic reviews, inadvertently reward operators of the sites where reviews were stalled for a failure to provide environmental information. Operators of these sites, unlike the majority of operators with initial reviews outstanding in November 2000, have not voluntarily complied with requests from the mineral planning authorities for environmental information.

Option 3: Regulations to apply the EIA Directive by modifying the 1999 EIA regulations so that they apply to conditions reviews which are stalled, and additional sanctions to make environmental impact assessment more effective and avoid potential environmental problems.

A8 The third option, in summary, proposes modifying the 1999 regulations, as amended by the 2000 regulations so that the requirements of the EIA

Directive apply to stalled mineral reviews, and includes additional sanctions with regard to automatic suspension and the potential permanent cessation of permission to carry out some or all of the ROMP development which is the subject of the stalled review (other than restoration and aftercare conditions) for the continued failure to comply with the requirements of the Regulations. That is, where a suspension engaged under the regulations continues in effect for a period of two years an mpa would be required to consider whether to exercise its modified functions under paragraph 3 of Schedule 9 to the 1990 Act to make Prohibition Orders. The main provisions would also include widening the definition of the ROMP applications in the EIA regulations to include stalled applications, including the requirement in appropriate cases for ES's; a specific time limited procedure for mpas and Welsh Ministers to follow in giving screening and scoping decisions and for those operators to provide a new ES; the application of automatic suspension, apart from restoration and aftercare conditions, where certain procedural requirements are not met and there is insufficient information to enable screening and scoping decisions to be given, until such time as all the information is provided to enable new operations to be determined.

Option 4: Regulations to apply the EIA Directive specifically, to conditions reviews which are stalled through bespoke EIA procedures, to make environmental impact assessment more effective and avoid potential environmental problems.

A9 The fourth option, in summary, involves making new regulations which apply a bespoke scheme for all stalled mineral reviews. In summary, the provisions are that all stalled ROMP development is automatically deemed to be EIA development, subject to a time-limited right to request a screening direction from the Welsh Ministers; that scoping decisions are mandatory; that ESs must be submitted in draft for assessment by mpas (or the Welsh Ministers on appeal or referral) as to their adequacy for publication and consultation purposes; that any failure on the part of an applicant or appellant, or in some cases other operators, to take any step required to be taken under the Regulations results in the automatic suspension of minerals development until the relevant substantial step has been complied. This proposal also includes the sanction proposed by option 3, concerning the potential permanent cessation of permission to carry out some or all of the ROMP development which is the subject of the stalled review (other than restoration and aftercare conditions) for the continued failure to comply with the requirements of the Regulations. That is, where a suspension engaged under the regulations continues in effect for a period of two years an mpa would be required to consider whether to exercise its modified functions under paragraph 3 of Schedule 9 to the 1990 Act to make Prohibition Orders.

Preferred option

A10 In view of the fact that reviews of conditions are considered by the courts to constitute "development consent" for the purpose of the EIA Directive, the only lawful and practical options are to implement the new Regulations as soon as possible by either option 3 or option 4. Pursuing option 1, 'do nothing' will result in, the non-transposition of the Directive in respect of these reviews. Pursuing option 2, that is, transposition by regulations bringing forward the first periodic review, would have the unfortunate potential to reward operators for the delay or refusal to provide ESs or environmental information. Either of these options will fail to secure the results necessary

and appropriate to address environmental concerns and to meet the UK's obligations under the EIA Directive.

A11 The stalled cases may have been subject to previous non-statutory screening and scoping decisions, and ESs may have been submitted voluntarily in the spirit of the existing EIA legislation. However, the substantial amount of time which has elapsed in some of these cases, since the date on which screening or scoping decisions were first made, or voluntary ESs were first submitted, means that the information upon which those decisions were based, or the information included in those (voluntary) ESs, may not now be up to date. In addition, there are a limited number of cases in Wales and it is considered to be expedient to address these cases by distinct and bespoke procedures. The costs and benefits of option 4 and option 3 are similar, however, the certainty provided by a bespoke scheme would have greater benefits to all those concerned.

A12 Both options 3 and 4 include a mechanism to secure that minerals development which is suspended under the Regulations does not remain suspended indefinitely. Without this indefinite suspension could result, with the consequence of the land falling into decay without the means to impose conditions to require the alteration or removal plant and machinery, or the removal or alleviation of injury to amenity. Although any restoration and aftercare conditions attached to the relevant planning permission continue in effect during the period of suspension, there could well be difficulties inherent in seeking to enforce those conditions during the suspension period. A requirement to fill in a void or to restore the land to its original state for example could, as a matter of fact, have the same effect as a prohibition order, given that the costs of recommencing activity after having implemented such conditions could well be prohibitive, particularly for smaller operators. Furthermore, the enforcement of restoration and aftercare conditions during the course of a suspension would not attract the statutory compensation arrangements which apply to the prohibition order regime.

A13 Mineral planning authorities already have powers to make prohibition orders under paragraph 3 of Schedule 9 to the Town and Country Planning Act 1990. Those powers would be available to mineral planning authorities in respect of suspended minerals developments, whether or not the Regulations made provision in connection with those powers. Without the provision made by the Regulations, mineral planning authorities would be required, from time to time, to consider whether to exercise their prohibition order powers; they would not be required to do so at the expiration of every two year period of suspension. Minerals Technical Advice Note 1: Aggregates (March 2004) states (in paragraph 31) that landbanks of hard rock are excessive particularly in North Wales and where further extraction is unlikely, Prohibition Orders should be made without delay. A number of Prohibition Orders have been confirmed since 2004 but there are also many mineral planning authorities that have not pursued using these powers to resolve the issue of long dormant sites.

A14 We do not wish the inadvertent effect of the Regulations to be to add further sites to the current list of dormant sites through indefinite suspension of mineral permissions, nor do we wish to exacerbate any environmental consequences of minerals developments. If sites remain suspended for two years because of the lack of environmental information, then it is appropriate to question whether operations are in fact likely to recommence.

A15 For these reasons, it is appropriate to require mpas to address their minds to the question of whether a Prohibition Order should be made in respect of every suspended minerals development which has remained in suspension for a period of two years. This will, in addition, offer certainty to local communities about further working, avoid any potentially damaging environmental consequences which could occur as a result of unrestored sites remaining indefinitely suspended, and act as a strong motivating factor for operators to engage constructively with the EIA regime.

A16 Option 3 and 4 both apply the EIA Directive to mineral reviews which are stalled. However, option 4, unlike option 3, provides a bespoke application of EIA requirements to stalled cases, which give a greater degree of clarity and transparency to the process of determining the stalled cases. This, in addition to the transitory nature of the Regulations and the complexity of the modifications which would result from Option 3 led to the conclusion that Option 4 would provide the greatest benefits to those affected by the legislation.

A17 *Sectors and groups affected*

The following organisations and individuals will be affected:

Certain mineral operators and owners
Environmental and amenity organisations
Certain mpas
Local interest groups and the general public

A18 *Race equality assessment*

These proposed Regulations do not have any race equality impacts.

A19 *Health impact assessment*

The provision of an environmental statement under options 3 and 4 to inform the mpas consideration of new conditions would assess the impact of continued mineral working on residents, wildlife and landscape. Its provisions could help to reduce the health impact of future mineral working to a greater degree than if no EIA was carried.

A20 *Rural considerations*

Minerals can only be worked where they are found and most mineral working therefore takes place in rural areas. However if environmental information to determine conditions is not forthcoming this may have a deleterious effect on the landscape. When working, all stalled review sites would provide employment opportunities for local communities.

A21 **Costs and benefits of option 1**

Economic benefits

The only benefit would be to the operators of the 'stalled' sites who would not have to pay for the provision of environmental statements or further

environmental information and would be able to continue operating with sub-standard conditions.

Economic costs

There would be significant (but at this stage, unquantifiable) costs to the Welsh Assembly Government arising from the failure to comply with the ECJ's ruling, through the certain re-referral to the ECJ, and possibly also through litigation nationally.

Environmental benefits

None have been identified.

Environmental costs

Mineral sites without modern working conditions because of the absence of EIA can potentially have an adverse impact on the environment and on local communities as operations can continue under the terms of the old permissions with little or no mitigation of the environmental impacts.

Social benefits

This option would prevent the potential for minerals development to be suspended at stalled review sites if environmental information continues not to be provided and hence may maintain employment opportunities at working sites.

Social costs

This option would maintain the status quo and result in continuation of environmental impacts of the works at these sites on local communities without conditions reflecting up to date environmental standards.

A22 **Costs and benefits of option 2**

Economic benefits

The main benefit will be to the operators of the sites where conditions reviews are 'stalled'. These operators would be able to claim compensation under Schedule 14 to the 1995 Act on the brought forward first periodic review where the mpa determines different conditions from those submitted by the applicant and the effect of the determined conditions (other than restoration and aftercare conditions) is to restrict working rights.

Economic costs

Conversely there will be an economic cost on mpas if they have to pay compensation to operators because they determine conditions which have an adverse impact on the asset value of the 'stalled' sites. The amount of compensation cannot be calculated at this stage as this would be subject to the type and number of conditions determined by the mpas. The operators of the sites where conditions reviews are 'stalled' would be required to produce an environmental statement earlier than the normal 15 years after conditions were finally determined on initial review. However, the costs of providing a

statement are in other respects no different to those falling to operators of any mineral site where the mpa has requested an ES. In addition, the costs to operators of the management time involved in preparing conditions for the first periodic review would occur in earlier rather than later. But again, these costs are no different to the costs falling on all mineral operators now that, under Schedule 14 to the 1995 Act, all mineral permissions are to be periodically reviewed every 15 years. The costs to the mpas of determining conditions under brought forward first periodic reviews at sites where initial reviews are stalled would fall before the end of the standard 15 year period.

Environmental benefits

Full environmental information will assess the impact of continued mineral working on residents, wildlife and landscape. Conditions determined following the submission of an environmental statement could help to improve local amenity by reflecting up to date environmental standards against which the environmental assessment had been made.

Environmental costs

The higher compensation implications for mpas of this option could deter them from imposing necessary stringent environmental conditions and so result in potential lack of environmental controls.

Social benefits

Completion of periodic reviews of the conditions for these sites at which conditions reviews are 'stalled' would alleviate any local resident concerns and uncertainty over the environmental impact caused by these sites. It would enable the sites to operate with new conditions, continuing to generate employment opportunities and producing material for economic use. However, the compensation implications could result in less stringent conditions being imposed with less controls than are needed to protect the amenity of local residents.

Social costs

No social costs have been identified from this option.

A23 **Assessment of the costs and benefits of option 3**

Economic benefit

The introduction of regulations under this approach will reduce, so far as possible, the likelihood of fines being imposed on the UK for the failure to implement the EIA Directive in relation to the stalled cases.. Measures intended to mitigate the impact of mineral working on the environment are likely to be more effective if considered afresh through the provision of a new ES, rather than through more ad hoc procedures where costs are less capable of being managed. The Welsh Assembly Government also believes that EIA is a useful tool in helping to achieve sustainable development, by ensuring that full regard is paid to environmental considerations for all stalled minerals review cases. The use of Prohibition Orders would attract the statutory compensation scheme which applies to those orders and consequently reduce the costs to mpas, as compared with option 2.

Economic costs

There would be costs to the operators of providing the environmental information. Producing an environmental statement as part of the review of conditions might cost on average around £35,000 for each site, with some estimated to be at around £100,000. The average length of time to carry out EIA and prepare an ES is 4-6 months, but longer periods are not unusual depending on the complexity of the case. EIA is a one-off additional "entry" cost to a typical non-mineral business where the development is likely to have a significant effect on the environment. However, minerals development can last for many years. Under present law, a periodic review of the conditions attached to mineral permission must be conducted every fifteen years; EIA may be required in appropriate circumstances before each further phase of the development can proceed, for example, where there has been a material change in the land use planning circumstances, or in mitigation technology, since the last review. EIA may therefore be a recurring cost at intervals of fifteen years for some longer lasting developments.

Failure to comply with a requirement to carry out EIA where the remaining development is considered to have significant environmental effects will result in the suspension of the right to win and work minerals or deposit mineral waste until the necessary requirements have been complied with. There would be a cost to operators, landowners and the local economy if the sanction of suspension were imposed on any of the sites. It is difficult to quantify this as each case will depend on the size of operation, number of people employed and turnover.

Environmental benefits

The benefit of a time limited information procedure ensures there is clarity about the provision of a new ES, where appropriate. This will provide a timely route to the implementation of modern operating conditions in accordance with up-to date environmental standards, which will benefit the environment.

Environmental costs

One inevitable disbenefit of the requirement is that formal, mandatory EIA is a process which can cover many months. During this time, mineral working at active sites can continue under the existing, unmodified, planning conditions. Under this option however, this situation will persist for a limited time, as opposed to potentially indefinitely, as it would under options 1 and 2. But, overall, the Assembly Government considers that there will be long term environmental benefits from the application of EIA in these cases where the mpa believes the operations still to be carried out under existing planning permissions at mineral sites will have significant environmental impacts.

Social benefits

Local residents will benefit from knowing that where reviews are currently stalled for want of full environmental information sites will in future meet the required environmental standards. Individual operators and the mining industry as a whole will benefit from the updating of permissions to meet environmental standards in terms of, respectively, local communities and better public relations for the industry.

Social costs

There may be wider social costs to local communities if there are job losses as a result of non-compliance with the Regulations and site operations are suspended. Further, the absence of an additional sanction could result in uncertainty for communities about the status of the site with respect to the potential for future working or restoration.

A24 Assessment of the costs and benefits of option 4

Economic benefit

The introduction of the proposed regulations will reduce, so far as possible, the likelihood of fines being imposed on the UK for the failure to implement the EIA Directive in relation to the stalled cases. Measures intended to mitigate the impact of mineral working on the environment are likely to be more effective if considered afresh through the provision of a new ES, rather than through more ad hoc procedures where costs are less capable of being managed. The Welsh Assembly Government also believes that EIA is a useful tool in helping to achieve sustainable development, by ensuring that full regard is paid to environmental considerations for all stalled minerals review cases. The procedures governing the submission of an ES, including the definition of an ES and the submission of a draft ES for checks prior to consultation, seeks to avoid continual requests for additional information and to minimise unnecessary costs for operators associated with advertising inadequate ESs. The key principles underlying the proposed new procedures are to enable effective participation by all those with an interest whilst at the same time minimising unnecessary costs for operators.

The use of Prohibition Orders would attract the statutory compensation scheme which applies to those orders and consequently reduce the costs to mpas, as compared with option 2. This would significantly reduce the debate at Public Inquiries into future mineral proposals where the extent of landbanks of existing permissions has been a contentious issue.

Economic costs

There would be costs to the operators of providing the environmental information. Producing an environmental statement as part of the review of conditions might cost on average around £35,000 for each site, with some estimated to be at around £100,000. The average length of time to carry out EIA and prepare an ES is 4-6 months, but longer periods are not unusual depending on the complexity of the case. EIA is a one-off additional “entry” cost to a typical non-mineral business where the development is likely to have a significant effect on the environment. However, minerals development can last for many years. Under present law, a periodic review of the conditions attached to mineral permission must be conducted every fifteen years; EIA may be required in appropriate circumstances before each further phase of the development can proceed, for example, where there has been a material change in the land use planning circumstances, or in mitigation technology, since the last review. EIA may therefore be a recurring cost at intervals of fifteen years for some longer lasting developments.

Failure to comply with a requirement to carry out EIA where the remaining development is considered to have significant environmental effects will result in the suspension of the right to win and work minerals or deposit mineral waste until the necessary requirements have been complied with. There would be a cost to operators, landowners and the local economy if the sanction of suspension or a requirement to make a Prohibition Order with new restoration and aftercare were imposed on any of the sites. It is difficult to quantify this as each case will depend on the size of operation, number of people employed and turnover.

Environmental benefits

Given the considerable amount of time which has elapsed since the mineral review applications, which are stalled, were submitted, the introduction of legislation to require the submission of environmental information will secure the protection of the environment from harm and will enable a more effective consideration of the need to mitigate adverse environmental impacts at the relevant sites and as a result will deliver better decisions on the modernising of these permissions. The clear distinction between procedures governing the preparation, submission and publicity as well as definitions of an ES will help to avoid situations where continual requests for, and provision of, additional information results in a fragmented and incoherent collection of information, which does not provide the transparency required by the EIA Directive. This in turn should provide benefits to minerals operators who have been frustrated by receiving repeated requests for new information, mpas and the general public, as well as for the physical environment.

The prevention of resumption of working following the making of a Prohibition Order after initial suspension would provide certainty to local communities about future mineral working and would enable the restoration of the site to proceed.

Environmental costs

One inevitable disbenefit of the requirement is that formal, mandatory EIA is a process which can cover many months. During this time, mineral working at active sites can continue under the existing, unmodified, planning conditions. But, overall, the Assembly Government considers that there will be long term environmental benefits from the systematic application of bespoke EIA procedures in the case of all stalled cases.

Social benefits

Local residents will benefit from knowing that where reviews are currently stalled for want of full environmental information sites will in future meet the required environmental standards and in certain cases earlier restoration will be achieved through the making of Prohibition Orders. Individual operators and the mining industry as a whole will benefit from the updating of permissions to meet environmental standards in terms of, respectively, local communities and better public relations for the industry.

Social costs

There may be wider social costs to local communities if there are job losses as a result of non-compliance with the Regulations and site operations are

suspended or the resumption of operations is prohibited through the making of Prohibition Orders.

Small Firms' Impact Test (SFIT)

A25 In June 2006 the operators of the sites where condition reviews are 'stalled' were notified of the decision by the Welsh Assembly Government to bring regulations into force and were encouraged to voluntarily provide the environmental information. There was little response to these letters except from one operator disagreeing with their site being a "stalled" application and one operator who provided the required environmental information so that the determination of the mineral review application could proceed. In England in response to similar letters sent out in April 2006, some operators responded that the cost of providing the environmental information would be prohibitive as they were small, low key operations, and in some cases mineral operations had ceased making the provision of an ES unnecessary. It was clear from the responses that the applications were 'stalled' for a variety of reasons, not always simply because environmental information has not been provided to enable new conditions to be determined. For example the site may currently be dormant and a new use of the site is being promoted, for example, housing, through a new planning permission.

A26 In England, the April 2006 letter was followed up with telephone interviews of a sample of four small firms operating at 'stalled' sites. Each firm confirmed that there would be a 'significant' financial impact, including in one case the possibility of going 'bankrupt' if an ES was required. While none of the operators could be precise on the cost of providing the information at this stage, they estimated that the cost would range from £10,000 to over £100,000 which reflected the scope of information requested by the mpas. In the latter case, an operator was hoping to re-negotiate with the mpa on the requirements for information in order to reduce the cost. The work of producing the information would also draw staff away from the day to day operation of the business.

A27 The vast majority of mineral extraction sites can be termed small or medium sized businesses. However, identifying mineral businesses as SMEs does not reveal the ability of operators to produce and pay for environmental statements, nor does it exempt them from having to comply with the requirement for environmental assessment imposed by the Directive. Depending on the nature and quantity of mineral being extracted, turnover and profits can be substantial, compared to the number of people employed. While the requirement to produce an ES will tend to bear more heavily on smaller businesses as a proportion of turnover, it is a requirement that has been applied to the mineral industry in general since 2000, with the overwhelming majority of operators complying. There is no provision in environmental regulations for smaller firms to operate to lower environmental standards than larger ones and we have a duty to fully transpose the EIA Directive or face proceedings in the European Court of Justice.

A28 To help mitigate the impact of the proposed regulations on small firms, the ability to use previous information, so long as it remains up-to date and the clear definition of what constitutes an ES and the emphasis that operators should only provide the information which they can be reasonably required to compile given current knowledge and methods of assessment will help small businesses manage the requirements contained in the regulations. The

ability to agree extensions of time with the mpas for complying with any of the steps contained within the regulations will assist in ensuring compliance in appropriate circumstances.

Competition Assessment

A29 It is currently competitively unfair that most mineral operators, the majority of whom are small or medium sized firms, have voluntarily produced environmental information to inform initial conditions reviews while a minority have refused to provide the information. It is also competitively unfair for some operators to have to adhere to more stringent environmental conditions in the operation of their undertakings whilst others do not.

A30 There are no robust competition issues arising under options 3 or 4 because after the proposed regulations come into force EIA will be applied to all minerals conditions reviews. However, it is acknowledged that the 2009 regulations contain additional sanctions relating to permanent cessation of minerals development in comparison to the 2000 EIA regulations for all other ROMP applications. The guidance accompanying 2009 regulations acknowledges this (paragraph 12) and makes clear that amendments will be forthcoming. Finally, the operators of the sites where reviews are stalled have had the chance to voluntarily avoid the imposition of regulations applying EIA to the cases in question but have not chosen to go down that route.

Enforcement, Sanctions and Monitoring

A31 Under options 3 and 4, the proposed Regulations would apply the sanction of suspension of operations to sites which are the subject of applications submitted before 15 November 2000 which remain undetermined when the proposed regulations come into force and where the applicant fails to comply with requirements at any of the trigger points contained in the proposed Regulations. Under both options mpas will retain the discretion to enforce against working in breach of planning control. Under option 4 if the suspension remains in place for 2 years the making of Prohibition Orders would prohibit the resumption of working except for restoration and aftercare conditions and provide a degree of environmental certainty.

Monitoring and review

A32 Monitoring and review will be needed to ensure that the proposed Regulations under are appropriately and proportionately implemented in respect of the stalled reviews. This is provided for in option 4 where Welsh Ministers may require mpas to provide information relating to the exercise of their functions under the regulations. Follow up letters will therefore be sent to the mpas within 6 months of the proposed Regulations coming into force to check on the position of the stalled reviews and on whether there are any outstanding cases.

A33 If it is clear that some mpas are failing to exercise their existing powers to make Prohibition Orders where it appropriate to do so, the Assembly Government will consider the use of its default powers to make the Orders where it is expedient to do so.

Implementation and Delivery Plan

A34 Subject to Ministerial approval, the intention is that the proposed Regulations would come into force in January 2010. The benefit will be a more effective means of ensuring the provision of ESs or other environmental information to assess the environmental impacts at any sites where initial reviews remain stalled for want of the provision of necessary environmental information and as a result deliver better decisions on the modernising of these permissions. It will also ensure that existing powers can be used more effectively by mpas to address the potential for indefinite suspension. This in turn should provide benefits to minerals operators, mpas and the general public, as well as for the physical environment.

Summary and Recommendation

Option	**Total cost per annum Economic, environmental, social**	**Total benefit per annum Economic, environmental, social**
1 - Do nothing	Substantial fines on the UK Government from the EC. Potential risk to the environment if environmental assessment not carried out or if delay due to reliance on the voluntary provision of information.	Operators would not have to pay for the environmental statements or further environmental information. Working sites remain in operation ensuring employment opportunities, but with few, if any, conditions thus endangering the environment and local amenity.
2 – Bring forward the first periodic review of conditions	Cost to local and national taxpayers if operators able to claim compensation. EC may still fine UK Government for the delay in fully transposing the EIA Directive. Cost of EIA estimated by operators ranges from £10,000 to over £100,000.	Compliance with ECJ ruling. Will benefit the environment. Benefit to operators who have wider scope for compensation where mpas determine different conditions to those submitted by the operator which adversely impact on the asset value of the operation. Certainty as to the future use of the suspended sites for local residents. New operating conditions based on an up to date environmental assessment.
3 – Apply the EIA Directive by modifying the 1999 EIA regulations so they apply to conditions reviews which are stalled. Apply the	Loss of employment opportunities and minerals if operations are suspended or resumption prohibited. Estimated costs to the operators of £10,000 to over £100,000 of providing the environmental information. Potential costs brought	Compliance with ECJ ruling. If accepted by the ECJ there would be no cost to the taxpayer. Will benefit the environment. Local residents benefit from knowing that sites where reviews are currently stalled' will in future meet the modern

sanctions of automatic suspension and prohibition orders with restoration and aftercare where necessary.	forward for designing and carrying out restoration and aftercare	environmental standards. Certainty as to the future use of the site for local residents. The mining industry as a whole will benefit from having all sites meeting up to date environmental standards.
4 - Apply the EIA Directive to conditions reviews which are stalled through bespoke EIA procedures. Apply the sanctions of automatic suspension and prohibition orders with restoration and aftercare where necessary.	Loss of employment opportunities and minerals if operations are suspended or resumption prohibited. Estimated costs to the operators of £10,000 to over £100,000 of providing the environmental information. Potential costs brought forward for designing and carrying out restoration and aftercare	Compliance with ECJ ruling. If accepted by the ECJ there would be no cost to the taxpayer. Will benefit the environment. Bespoke procedures provide a higher degree of certainty about the application of EIA, and are considered to represent a more effective EIA process, providing clarity and transparency. Local residents benefit from knowing that sites where reviews are currently stalled will in future meet the modern environmental standards. Certainty as to the future use of the site for local residents. The mining industry as a whole will benefit from having all sites meeting up to date environmental standards. Restoration and aftercare will be implemented within a reasonable time frame.

After considering all of the above, it is our opinion that **Option 4** is the most proportionate way forward. It ensures a reasonable application of the EIA Directive to stalled conditions reviews. The regulations will only be applicable to the stalled cases, and once all of these cases have been completed the regulations will lapse.