

SL(5)614 – The Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020

Background and Purpose

This Order amends the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (“the 2012 Order”) and the Developments of National Significance (Procedure) (Wales) Order 2016 (“the 2016 Order”) to extend the period during which certain requirements are modified or disapplied.

Article 2 amends article 2G(2)(b) of the 2012 Order to extend the emergency period during which the publicity and notice requirements for pre-application consultation are modified. It also extends the emergency period for the purposes of the time which community councils have to make representations on applications notified to them. The emergency period ends on 8 January 2021.

Article 3 amends article 12(6A)(b) of the 2016 Order to extend the period during which hard copies of applications for developments of national significance are not required. That period ends on 8 January 2021.

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The 21 day rule under the Statutory Instruments Act 1946 (incorporated in Schedule 10 of the Government of Wales Act 2006) provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can be caused if legislation is annulled after it has been implemented.

The Order was laid on 17 September, and came into force the following day, 18 September. In this case, the Welsh Government considers that the circumstances justify a breach of the



21 day rule. We note the letter sent by Rebecca Evans, Minister for Finance and Trefnydd to the Llywydd, dated 17 September 2020. This states:

"The Order seeks to extend the period during which temporary arrangements introduced by The Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020 ("the first 2020 Order") apply to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (the "DMPWO") and the Developments of National Significance (Procedure) (Wales) Order 2016.

The temporary arrangements set out in the first 2020 Order were introduced to overcome the closure of non-essential public buildings and the restrictions on non-essential travel, which were preventing the planning system functioning effectively. These are due to end on 18 September but will be extended to 8 January 2021.

As the coronavirus restrictions have gradually been lifted, the need for the temporary arrangements should have fallen away. What we have found however is despite the legal restrictions having been lifted, many public buildings such as libraries and council offices have remained closed, or subject to limited access. As a result, the provisions set out in the first 2020 Order remain necessary to maintain the efficient operation of the planning system.

The Order is required to come into force by 18 September to maintain continuity of planning services.

Not bringing the Order into force straight away will cause a backlog of planning applications waiting to be submitted, which would have consequential impacts for the construction sector, and economy, at a time when rapid reversal of financial losses is important to lessen the longer term economic and social damage being caused. Not adhering to the 21-day convention is thought necessary and justifiable in this case."

2. Standing Order 21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Paragraph 5.1 of the Explanatory Memorandum states that "due to the urgent nature of this amendment, the Welsh Government has not undertaken a consultation on these proposals". The Welsh Government has laid a detailed Explanatory Memorandum, and a Regulatory Impact Assessment has been prepared in respect of this Order. Paragraph 5.2 of the Explanatory Memorandum states as follows:

"The amendment is required immediately to extend mitigation measures put in place to manage the effects of COVID-19 restrictions on travel and the opening of premises on specific parts of the planning system. The amendment will enable planning applications to continue to be submitted by developers, avoiding an increasing backlog of cases, and enabling implementation of consents as COVID-19 restrictions ease.



Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

23 September 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee