

Explanatory Memorandum to the Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020

This Explanatory Memorandum has been prepared by the Planning Directorate and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Housing and Local Government

17 September 2020

PART 1

1. Description

- 1.1 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (the “DMPWO”) provides for procedures connected with planning applications, consultations in relation to planning applications, the determination of planning applications, appeals, local development orders, certificates of lawful use or development, the maintenance of registers of planning applications and related matters.
- 1.2 The Developments of National Significance (Procedure) (Wales) Order 2016 (“the DNSPWO”) makes provision for the manner in which applications for planning permission in respect of Developments of National Significance (“DNS”) are to be dealt with by the Welsh Ministers.
- 1.3 The Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020 (“the first 2020 Order”) came into force on 19 May 2020 and modifies or disapplies certain requirements in the DMPWO and DNSPWO in relation to the period beginning with the coming into force date of the Order and ending on 18 September. In particular the Order does the following:

The pre-application procedure for major development

- In relation to pre-application consultation which must be carried out before submitting an application for planning permission for certain development known as major development, the requirement to make copies of documents associated with a proposed planning application available locally for inspection, is replaced with a requirement to make such documents available on a website and in hard copy on request.
- Changes to reflect the above are made to the requisite site notices and letters to owners and occupiers of adjoining land, as well as to notices to community consultees. If hard copies of any documents have been requested, an application must not be submitted before the end of the period of 14 days beginning with the day on which the last document is sent.
- A pre-application consultation report is to include confirmation requirements have been discharged, relating to making information about the proposed application available on a website and to provide hard copies of such information where requested. A statement confirming whether hard copies have been requested is also to be included.

Time for community councils to respond to notifications

- The period of time which community councils have to respond to planning applications notified to them is extended from 14 to 21 days.

Deposit of hard copy DNS applications

- The current requirement in the DNSPWO to deposit a hard copy of an application for planning permission for a DNS, where an application has been submitted by electronic communication is disapplied.

1.4 The Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020 seeks to extend the period during which the temporary procedures apply to the 8 January 2021.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Order will come into force less than 21 days from the date of laying.

2.2 The Order is required to come into force on 18 September 2020 to provide continuity, maintaining the provisions introduced by the first 2020 Order, which are due to expire on 18 September 2020.

2.3 Not bringing the Order into force by this date will prevent the continuity of measures introduced by the first 2020 Order to assist with the continued operation of the pre-application consultation procedure, community council consultation on planning applications, and the submission of DNS applications. This would likely cause an increasing backlog of planning applications waiting to be submitted, which would have impacts for the construction sector, and longer term economic and social consequences. Not adhering to the 21-day convention is thought necessary and justifiable in this case.

3. Legislative background

3.1 Section 61Z (8) and (9) of the Town and Country Planning Act 1990 (the “1990 Act”) enables the Welsh Ministers to make provision about or in connection with consultation required to be carried out in relation to proposed applications for development specified in a development order. (Major development is specified for these purposes in article 2B(1) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and major development is defined in article 2 of the same.)

3.2 Section 62(11) enables the Welsh Ministers to make provision by development order about pre-application consultation reports.

3.3 Section 62R enables development orders to make provision about applications for planning permission made to the Welsh Ministers.

3.4 Section 333(4B) of the 1990 Act enables different provision for different purposes, cases and areas.

- 3.5 The powers conferred on the Secretary of State by sections 59 (power to make development orders), 62(1) and (2) (provision as to applications for planning permission), 71(1), (2)(a), (2A) (consultation on applications for planning permission) and 333(7) (power to vary order) of the 1990 Act were, so far as exercisable in relation to Wales, transferred to and are now vested in the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and the entry in Schedule 1 for the Town and Country Planning Act 1990.
- 3.6 The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.
- 3.7 Section 62(1) has been applied with modifications by the Developments of National Significance (Application of Enactments) (Wales) Order 2016.
- 3.8 This Order is being made under the negative resolution procedure.

4. Purpose and intended effect of the provisions

- 4.1 The COVID-19 emergency remains in effect in the United Kingdom. While workplaces, public buildings, council offices and community centres can now legally open, many remain closed, or subject to limited access.
- 4.2 In addition, whilst most restrictions on travel have been lifted, the imposition of current local lockdowns and the potential for more in the near future in response to increased transmission of COVID-19, will have the effect of re-imposing limitations on movement.
- 4.3 The provisions set out in the first 2020 Order therefore remain necessary, to maintain the efficient operation of the planning system in Wales.
- 4.4 The Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020 seeks to extend the periods prescribed in the first 2020 Order to 8 January 2021. The scope of the provisions is described in part 1, the purpose for which is as follows:

Requirement to carry out pre-application consultation

- 4.5 As part of the measures introduced as part of the ongoing response to COVID-19, all non-essential public buildings were closed and non-essential travel is not permitted. As a consequence, it is difficult for developers to comply with article 2C(1)(b) of the DMPWO.
- 4.6 The pre-application consultation procedure must be completed before planning applications for major development can be submitted to Local Planning Authorities.

- 4.7 The aim of the changes to the pre-application procedure provisions described in section 1 above is to enable developers to make information about proposed major development available locally in a practical way while Coronavirus restrictions impede this, so that interested parties have an opportunity to consider and comment if they wish. To maximise inclusivity, the information is available electronically and in hard copy on request.
- 4.8 The completion of this pre-application process will in turn enable developers to proceed to submit applications for planning permission for major development, avoiding an increasing backlog of planning applications waiting to be taken forward. If the applications are subsequently granted, the construction sector can then implement them as soon as the restrictions are eased, lessening the longer term economic and social damage being caused.

Representations by community councils before determination of applications

- 4.9 Community councils are the grassroots tier of government in Wales. Community councils have an important role in acting as the local link with communities to improve their understanding of, and participation in, the planning process.
- 4.10 The extension of the period during which they may make representations on applications notified to them is intended to alleviate the difficulties experienced by community councils in undertaking regular scheduled meetings due to control measures introduced as part of the COVID-19 response.

Removal of the requirement to deposit hard copy of DNS planning application

- 4.11 Applications for DNS are typically submitted electronically, however, where such an application is made, there is the requirement to deposit a hard copy with the Welsh Ministers and the local planning authority. As a consequence of the ongoing restrictions in response to COVID-19, and the closure of non-essential public buildings, relevant offices are not currently staffed for the purpose of receiving hard copies of applications, and as such, it can be difficult to verify this.
- 4.12 The purpose of the amendment to the DNSPWO is to disapply an aspect of the current procedure with which it is difficult to verify compliance while Covid-19 related restrictions are in place.

5. Consultation

- 5.1 Due to the urgent nature of this amendment, the Welsh Government has not undertaken a consultation on these proposals.
- 5.2 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.

PART 2 – REGULATORY IMPACT ASSESSMENT

1. Pre-application consultation

Options

1.1. Two options have been considered:

- Option 1 - Do nothing i.e. no legislative changes.
- Option 2 - Introduce an Amending Order to extend the emergency period specified in Article 2G(2), maintaining the removal of the requirement that developers make information available for inspection at a location in the vicinity of the proposed development until 8 January 2021.

Option 1 – Do nothing

Description

1.2. The provisions inserted into the DMPWO by the first 2020 Order will lapse on 18 September. Developers would have to fully comply with Article 2C of the DMPWO before they submit a valid planning application for major development. However, as long as buildings normally open to the public remain closed due to COVID-19, developers would find it difficult to fully comply.

Costs

The Welsh Government

1.3. There would be no financial cost to the Welsh Government.

1.4. There would however be a knock-on effect on the delivery of locally and nationally strategic developments as a result of the delay that would inevitably occur as a result of the inability of developers to fully carry out pre-application consultation and then submit a valid application for major development. Major development is development involving any one or more of the following:

- a) the winning and working of minerals or the use of land for mineral-working deposits;
- b) waste development;
- c) the provision of dwellinghouses where—
 - i. the number of dwellinghouses to be provided is 10 or more; or
 - ii. the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- e) development carried out on a site having an area of 1 hectare or more;

Local Planning Authorities

- 1.5. Option 1 would result in few to no applications for major development being submitted to local planning authorities for as long as developers are unable to comply with the procedural requirements of the DMPWO.
- 1.6. The primary source of funding for LPAs is generated from fee income received for determining applications. Our evidence suggests this funding is heavily reliant upon the fees associated with the determination of these types of applications¹.
- 1.7. A pause in the submission of applications for major development would therefore have detrimental impact upon the funding of local planning authorities.

Development Industry

- 1.8. The total cost for the developer of undertaking a basic level of pre-application community consultation is estimated to be between £390 and £1,430². Whilst the pausing of the pre-application consultation process would result in these costs being saved, these are likely to be significantly outweighed by the costs incurred as a result of delay. Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a financial burden on developers and the Welsh economy.
- 1.9. Delay is likely to lead to a detrimental impact on how the development and management of land in Wales is delivered by the planning system, which is one of the main levers for economic, social and environmental progress. A healthy, functioning development industry is likely to play a significant role in the recovery process once COVID-19 measures are relaxed.

The Local Community

- 1.10. Pausing the pre-application system would delay the development of a wide-range of large-scale, socially and economically beneficial, developments to the detriment of local communities, particularly those where there is a need for affordable housing or employment.

Benefits

The Welsh Government

- 1.11. There are no recognisable benefits to the Welsh Government.

Local Authorities

¹ Changes to planning and related application fees. Welsh Government. December 2019.

² EMRIA Planning (Wales) Act 2015 (uprated to current prices using the GDP deflator series')

1.12. At the current time, local authority resources are stretched due to the impacts of COVID-19. A reduction in the number of planning applications will enable planning department staff resources to be reassessed and potentially redeployed to other key areas to meet the temporary needs of the local authority.

1.13. However, the redeployment of staff, if not returned as COVID-19 restrictions begin to lift, could impact upon the functioning of the planning service to the detriment of the ability of the planning system being able to function in its role as a key tool, assisting with the recovery process.

Development Industry

1.14. There are no benefits to the development industry.

The Local Community

1.15. Under option 1, the pre-application consultation process will likely be paused until public buildings widely reopen so developers can use these facilities to host information relating to the proposed development for inspection by the public.

Option 2 - Introduce an Amending Order extending the emergency period.

Description

1.16. Option 2 would result in the provisions inserted into the DMPWO by the first 2020 Order being extended until 8 January 2021. The first 2020 Order has the following effect:

- Removes the requirement to make information available for inspection at a location in the vicinity of the proposed development and replaces it with a requirement to make the information available on a website.
- Replaces Schedule 1B, the 'requisite notice', to reflect all information being stored online only. The notice must now also include a contact telephone number for the developer/agent. Upon request, information must be provided in hard copy at the developers cost.

1.17. These changes would be temporary until 8 January 2021, or until such time a further amending Order is made to remove or extend the temporary changes following government advice concerning COVID-19.

Costs

The Welsh Government

1.18. There would be no additional financial cost to the Welsh Government.

1.19. All costs associated with the making of the legislation and dissemination of relevant guidance will be met from existing budgets.

Local Planning Authorities

1.20. There would be no additional costs to local planning authorities. Normal pre-COVID-19 business would continue.

Development Industry

1.21. There may be an additional cost to the development industry for the posting a hard copies of information requested by those who do not have internet access. Of all households in Great Britain, 93% had access to the internet in 2019³ therefore such requests are expected to be minimal.

1.22. The cost of producing a printed copy of a major planning application varies on a case by case basis, and depends on the extent of the application and the supporting material required to describe the development. Those who request information may only want to see a particular plan or survey and not the all the information relevant to the application. Nonetheless, the additional costs incurred are insignificant compared to the potential costs incurred through delay.

The Local Community

1.23. There are no financial costs to the local community, normal pre-Covid-19 business would continue.

1.24. Mitigation has been put in place to ensure those who do not have internet access can still access the relevant information. A telephone number will be provided on the site notice which those without internet access can contact to request a hard copy of the relevant information. They may also discuss the development with the developer/agent.

1.25. There is a risk that, due to people observing social distancing and/or self-isolating, those who are not directly consulted may not see the site notice and therefore may not be aware of the consultation. Whilst the publication of a site notice and direct neighbour notification are the only statutory publicity requirements, developers often go beyond the minimum requirements to ensure their consultation has maximum exposure, such as posting on local social media pages.

1.26. Developers will be reminded to exploit social media to publicise their consultations to ensure the widest possible reach. Word of mouth will also continue to assist with awareness within communities.

1.27. Notwithstanding this, following the submission of a planning application, a formal consultation and publicity process will be undertaken by the local

³ Office for National Statistics. Internet Users, UK 2019.

planning authority. This will provide a second opportunity for those with an interest in the development to make representations before a final decision is made to grant or refuse planning permission.

Benefits

The Welsh Government

- 1.28. The legislative amendment proposed under option 2 would enable the pre-application consultation process to continue.
- 1.29. Prosperity for All⁴ acknowledges planning decisions affect every area of a person's life and sends a message of working differently. The strategy states the right planning system is critical to delivering the Welsh Government's objectives. Amending procedures will ensure the smooth functioning of the planning application system, supporting local planning authorities to deliver sustainable development, and supporting businesses by maintaining an effective planning system which provides the means for creating economic opportunities for all.

Local Planning Authorities

- 1.30. Local planning authorities would continue to receive fee income from applications for major development.
- 1.31. Planning departments would retain staff to ensure they are sufficiently resourced. This will ensure they are in a state of readiness for applications to be submitted post-Covid-19 as part of the economic recovery process.

Development Industry

- 1.32. Under option 2, the development industry would continue the pre-application consultation process, the end product of which is the ability to submit planning applications for major development. This will prevent widespread delays in the submission of planning applications, and the knock-on impacts for the construction sector.
- 1.33. The development industry can maintain business continuity through the continued submission of planning applications. This will contribute towards ensuring people with roles linked to the planning system remain in employment during this national emergency, supporting wealth creation and a vibrant economy.

The Local Community

⁴ Prosperity for All: the national strategy. Taking Wales Forward. The Welsh Government. 2017

1.34. Under option 2, the local community will benefit directly from the development industry being able to continue – from affordable housing to business building new premises which will create employment, both in the construction industry and to the end user of those facilities.

Summary and Preferred Option

1.35. Option 1 would once again pause the development industry for major development. This would have economic implications for developers, local planning authorities and the wider economy. The delay could impact upon the readiness of the planning system to assist in the recovery process post-Covid-19.

1.36. Option 2 would ensure the submission of planning applications for major development could continue, preventing delay to the development industry and planning system.

1.37. Option 2 is therefore the preferred option.

2. Community Council consultation

Options

2.1. Two options have been considered:

- Option 1 - Do nothing i.e. no legislative changes.
- Option 2 - Introduce an Amending Order extending the emergency period, maintaining the 21 day period for consultation responses

Option 1 – Do nothing

Description

2.2. In respect of the planning application process, upon notifying the local planning authority that they wish to be notified on a particular application, Article 16 of the DMPWO prescribes a statutory period of 14 days (30 days in the case of an EIA application) in which Community Councils must make those representations to the local planning authority. The local planning authority are prevented from determining the application during this period.

2.3. Amendments inserted into the DMPWO by the Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020 extended this period to 21 days.

2.4. Doing nothing would mean the timescale would revert to 14 days.

Costs

The Welsh Government

2.5. There would be no financial cost to the Welsh Government.

Local Planning Authorities

2.6. Whilst there would be no financial cost to Local Planning Authorities, there could be a democratic impact with applications potentially being determined without receiving representations from Community Councils.

2.7. The representation of Community Councils could have impacted upon the determination of planning applications.

Community Councils

2.7. Whilst there would be no financial cost to Community Councils, there is a risk that they would be unable to participate in the planning process as a result of being unable to coordinate a remote meeting and provide representations to the Local Planning Authority within the current 14 day timescale.

2.8 This would result in democratic deficit in the decision-making process.

Benefits

The Welsh Government

2.9 There are no benefits to the Welsh Government.

Local Planning Authorities

2.10 There are no benefits to Local Planning Authorities.

Community and Town Councils

2.11 There are no benefits to Community and Town Councils.

Option 2 - Introduce an Amending Order extending the emergency period, maintaining the 21 day period for consultation responses

Description

2.12 Option 2 would result in the extended 21 day period during which Community and Town Councils must make representations to Local Planning Authorities following a request be retained until 8 January 2021.

2.13 Maintaining this extended period would provide additional time for a response in light of difficulties experienced by Community Councils in undertaking regular scheduled meetings due to government control measures introduced in as part of the COVID-19.

Costs

The Welsh Government

2.14 There would be no additional financial cost to the Welsh Government.

2.15 All costs associated with the making of the legislation and dissemination of relevant guidance will be met from existing budgets.

Local Planning Authorities

2.16 There would be no financial cost to Local Planning Authorities.

Community and Town Councils

2.17 There would be no financial cost to Community and Town Councils.

Benefits

The Welsh Government

2.18 There are no direct benefits to the Welsh Government.

Local Planning Authorities

2.19 Maintaining the extended time period for responses by Community Councils at 21 days would bring the timeframe in line with that currently afforded to general members of the public as part of the statutory publicity period.

2.20 A single date on which all consultation responses are expected to be received will assist in the management of the application process.

Community and Town Councils

2.21 COVID-19 has impacted upon the ability of Community Councils to undertake their regular meetings due to meeting places being closed and members observing social distancing.

2.22 The additional time provides Community Councils will flexibility to arrange remote meetings and provide timely responses to Local Planning Authorities.

Summary and Preferred Option

2.23 Option 1 would revert the timescale for community and town councils to make representations on planning applications follow a request to be consulted to 14 days. Delays in the ability of Community Councils to host meetings is likely to result in their responses being delayed, potentially being submitted to the local planning authority after they have determined the planning application.

2.24 Option 2 would maintain the extended period during which Community Councils must make representations at 21 days, in line with general public consultation timeframes. The additional time would assist Community Councils to provide timely responses to planning applications, ensuring maximum democratic involvement in the decision-making process.

2.25 Option 2 is therefore the preferred option.

3. Changes to DNS

Options

3.1. Two options have been considered:

- Option 1 - Do nothing i.e. no legislative changes.

- Option 2 – Extend the period during which the requirement to deposit a hard copy of the DNS planning application to both the Welsh Ministers and LPA is disapplied, where an application is made electronically.

Option 1 – Do nothing

Description

- 3.2. Prior to the provisions inserted into the DNSPWO by the first 2020 Order, where a DNS planning application is made electronically, the DNSPWO contains provision which requires the applicant to deposit a hard copy of the planning application to both the Welsh Ministers and the LPA. The purpose of this is for practical reasons, such as to enable the LPA and for the Welsh Ministers to have a hard copy at hand to analyse the application, which is the preferred format of many officers and appointed persons who will examine the application.
- 3.3. Doing nothing would mean this requirement would be reinstated, were an application submitted electronically.

Costs

The Welsh Government

- 3.4. There would be no financial cost to the Welsh Government.

Local Planning Authorities

- 3.5. There would be no financial cost to LPAs.

Development Industry

- 3.6. The cost of producing a printed copy of a DNS planning application varies on a case by case basis, and depends on the extent of the application and the supporting material required to describe the development. An estimate has been drawn of £120, based on the cost of printing 1,000 pages in colour, binding costs and the cost to plot 25 drawings at A1 size. The cost for two applications, including delivery, is estimated to be £260 on a per application basis.

Benefits

The Welsh Government

- 3.7. There are no major benefits to the Welsh Ministers as a copy of the application will have been submitted electronically. The receipt of a hard copy would be a matter of convenience for officials in analysing the application.

Local Planning Authorities

3.8. There are no major benefits for the LPA as a copy of the application will have been submitted electronically. The receipt of a hard copy would be a matter of convenience for officers in analysing the application. While the hard copy may be made available for inspection, the duty to hold a planning register is generally undertaken and discharged electronically.

Development Industry

3.9. There are no known benefits to the Development Industry. As the Development Industry would be unable to comply with the requirements of the DNSPWO, there would be the inability to submit a valid application.

Option 2 – Extend the period during which the requirement to deposit a hard copy of the DNS planning application to both the Welsh Ministers and LPA is disapplied, where an application is made electronically, and extend the period for consultation responses

Description

3.10. Applications for DNS are typically submitted electronically. During the COVID-19 outbreak, practical issues may arise with the deposit of hard copies as the relevant offices are not currently staffed for the purpose of receiving it, and receipt of it cannot always be verified.

3.11. The first 2020 order amended the DNSPWO by removing the requirement for a hard copy to be submitted to be deposited with the Welsh Ministers and LPA, where the application made electronically, for reasons of practicality.

3.12. The amendment expires on 18 September 2020.

Costs

The Welsh Government

3.13. There would be no additional financial cost to the Welsh Government.

3.14. All costs associated with the making of the legislation will be met from existing budgets.

Local Planning Authorities

3.15. There would be no additional financial cost to LPAs. As offices are not currently staffed, there would be no facility to print the application. Officers must analyse all applications electronically.

Development Industry

3.16. There would be a cost saving of approximately £260 per application.

Benefits

The Welsh Government

3.17. There are no direct benefits to the Welsh Government.

Local Planning Authorities

3.18. There are no direct benefits to LPAs.

Development Industry

3.19. COVID-19 has impacted upon the ability of the Development Industry to comply with the requirements of the DNSPWO. Maintaining the change at option 2 will enable the Development Industry to continue to submit applications and comply with the relevant requirements.

Summary and Preferred Option

3.20. Option 1 would revert to the status-quo, however, could result in applications not complying with the relevant requirements and subsequently not being made. Option 2, allows for continuity of the amended process, while removing a requirement which prevents applications from effectively being submitted.

3.21. Option 2 is therefore the preferred option.

4. Competition Assessment

4.1. A competition filter test has been completed. The proposals are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.