

Environment, Planning and Countryside Committee

EPC(2) 14-06 (p5) Explanatory Memorandum

To: Business Committee

From: Carwyn Jones AM

Minister for Environment, Planning and Countryside

Explanatory Memorandum

The Planning (Listed Buildings And Conservation Areas) (Amendment) (Wales) Regulations 2006

Summary

These Regulations amend the Planning (Listed Buildings And Conservation Areas) Regulations 1990 [S.I.1990/419]. They make provision for access statements, which are required to accompany applications for listed buildings consent.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to the Planning (Listed Buildings and Conservation Areas) (Amendment) (Wales) Regulations 2006, in accordance with Standing Order 24.6.
2. A copy of the Instrument is submitted with this Memorandum.

Enabling Power

3. The powers enabling this Instrument to be made are contained in section 10(4)(b) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as inserted by section 42(8) of the Planning and Compulsory Purchase Act 2004. These powers have been conferred on the National Assembly for Wales. Responsibility for issues relating to the contents of these Regulations have been delegated to my portfolio as Minister for Environment, Planning and Countryside.

Effect

4. The measure would amend the Planning (Listed Buildings and Conservation Areas) Regulations 1990 [S.I.1990/1519] in terms of access statements accompanying applications for listed buildings consent.
5. There is a separate explanatory memorandum and regulatory appraisal for the proposed statutory

instrument amending the Town and Country Planning (General Development Procedure) Order 1995 [S.I.1995/419] in terms of access statements accompanying certain planning applications.

6. The purpose of the access statement would be to explain and justify the access principles and concepts on which a development proposal is based, and how these will be reflected in individual aspects of the scheme. It should be proportionate to the development proposed and would support other more detailed material submitted as part of certain applications for planning permission or listed building consent. It would ensure that local planning authorities (LPAs) have sufficient information to properly consider access issues against relevant policies in their development plans.

7. Places with good access for the disabled also provide better access to others with mobility problems and parents with young children. Promotion of access statements through this amendment is a critical planning tool in the delivery of the Assembly Government policy on quality design and social inclusion across the country. The inclusiveness of design can make a difference in creating places that will stand the test of time, and be valued by their community. Well designed, inclusive and accessible places last longer and are easier to maintain, so the costs of good design is an investment repaid over time.

8. There are often specific issues regarding listed buildings and access. Access statements for listed buildings consent applications and certain planning applications will also ensure consistency across the development control system.

9. Section 10 of the Planning (Listed Buildings and Conservation Areas) Act 1990 gives the National Assembly for Wales power to make provision for the way in which applications for listed building consent are to be made. Section 10(4) the Planning and Compulsory Purchase Act 2004 provides that the Regulations must require that an application for listed building consent of such description, as is specified, must be accompanied by a statement about how issues relating to access to the buildings have been dealt with. These Regulations allow for these requirements by inserting a new regulation 3B into the Planning (Listed Buildings and Conservation Areas) Regulations 1990 setting out the type of application to which the requirement for an access statement applies (i.e. applications for listed buildings consent except in relation to works affecting only the interior of a building) and setting out the form and content of that statement.

Target Implementation

10. It is intended that the Instrument be made on 13 December 2006. The coming into force date is yet to be determined. In England, secondary legislation came into force in August 2006 in relation to combined design and access statements (SIs 2006/1062 and 2006/1063). In Wales, implementation has been scheduled later to enable full consideration of the Welsh context.

11. These Regulations are being processed in tandem with Town and Country Planning (General Development Procedure) (Amendment) (Wales) Order 2006.

12. The implications of delaying both these Regulations and that Order for LPAs and applicants would be that requirements for certain accessibility information would depend upon the policy put in

place in a particular area rather than a mandatory nation-wide requirement which would provide clarity for everyone and a level playing field for developers. It would mean the continued potential for costly solutions being required later in the planning and development process where they had not been considered at the earliest application stages, and that social exclusion in the built environment would continue to be inadequately addressed. Implications of delay for the Assembly Government would be failure to implement legislation which is supportive of the the Disability and Equality Duty to be placed on public authorities from December 2006, under the Disability Discrimination Act 2005.

Financial Implications

13. It is anticipated that there will be no financial implications for the Assembly Government arising from implementing these Regulations.

14. There may be a small administrative cost to LPAs in checking for and putting statements on the public register, commenting on their appropriateness and monitoring their effectiveness. This may require a greater level of knowledge and training among staff in the LPAs. This will entail some costs in terms of staff resources, but these costs would also be the outcome of imposing requirements through the development plan anyway. LPAs should already be considering accessibility issues under the Disability and Equality Duty, so the training costs etc would be required anyway. These costs cannot be quantified but will be met from existing budgets.

15. Applicants will incur a cost in having to prepare a statement (where it is required) and may have to seek professional advice. However, even if the requirement was not made statutory, if applied through development plan policy then these costs would still need to be incurred. Most developers would already provide this information for public sector clients (under the Disability Discrimination Act 2005), and already need to provide information on internal accessibility issues as part of the requirements under Part M of the Building Regulations. This requirement would not entail significant extra detail or cost – the statements would make the requirement more transparent to the LPA and community. It is not possible to quantify the cost of preparing a statement, as its length and content would be proportionate to the type of development proposed; however, it is anticipated that it would not comprise a significant proportion of the cost of preparing documents required in relation to the application.

Regulatory Appraisal

16. A Regulatory Appraisal has been carried out in relation to this Instrument and is attached.

Consultation

With Stakeholders:

17. A consultation on ‘Changes to the Development Control System in Wales’ took place from 20 July to 28 September 2006 and contained the principles of access statements and the draft policy framework for the necessary Instruments, together with draft regulatory appraisals. These principles will be introduced in the Order and Regulations. That policy framework will be finalised to issue in

2007 to complement the Order and Regulations.

18. A list of consultees is attached at Annex A to the Regulatory Appraisal. The consultation was also placed on the Assembly web-site and a press notice was issued on 19 July ('New Measures to Improve Access for Disabled People').

19. 37 responses were received on the issue of access statements. 51% of these responses specified their support or favour of statutory access statements. 6% of respondents (i.e. two respondents) specified they did not want them introduced (reasons given were that it would be a regulatory burden on developers, amenity groups and LPAs; that sufficient powers exist under the 1995 Order for LPAs to require a developer to supply reasonably necessary information; and that a statutory requirement would appear onerous and instead the requirement should be site specific and should be dealt with through the development plan and supplementary planning guidance). 43% just made comments, many of which apply to guidance rather than the statutory instruments. The summary report of the analysis of the consultation responses on access statements is enclosed. The Regulations have not been redrafted as a result of consultation responses received.

With Subject Committee

20. These Regulations were notified to the Environment, Planning and Countryside Committee, via the list of forthcoming legislation on 28 September 2006 (EPC(2)-12-06(p.3), Annex 2, item no.69). The Regulations were identified for detailed scrutiny and will be scrutinised on 26 October 2006.

Recommended Procedure

21. Subject to the views of the Business Committee, I recommend that these Regulations proceed to plenary under Standard procedure, to give members opportunity to debate them.

Compliance

22. The proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121);
- be compatible with Community law (section 106);
- be compatible with the Assembly's human rights legislation (section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (section 108).

23. The information in this Memorandum has been cleared with Legal Services (LS)
24. Drafting lawyer: Elaine Osborne, (ext 5663).
25. Head of Division: Rosemary Thomas, Planning Division, (ext 3580).
26. Drafting Policy Official: Elaine Ancrum, Planning Division 3a, (ext 3710).

Carwyn Jones Am October 2006
Minister For Environment, Planning And Countryside