

# SL(6)068 - The Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021

## 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”) in relation to pre-application consultation and consultation before the grant of planning permission.

The 2012 Order and the 2016 Order (collectively referred to as “the Procedure Orders”) place a statutory requirement on key bodies to be consulted at the pre-application and post-submission consultation stages of the consenting processes for planning applications and applications for a Development of National Significance (“DNS”).

This Order amends the Procedure Orders so as to make Fire and Rescue Authorities in Wales ‘statutory consultees’ for certain types of development at both pre-application and post-application stages. This will apply to planning applications to be determined by local planning authorities and DNS applications determined by the Welsh Ministers.

This Order also contains amendments to the criteria by which Natural Resources Wales is consulted on matters of flood risk. These amendments are required as a result of a decision to replace the current TAN 15 development advice map with a new Flood Map for Planning. The Procedure Orders ensure that Natural Resources Wales is consulted on development in flood zone C of the development advice map. This zone will not exist in the Flood Map for Planning and it is therefore necessary to amend the Procedure Orders to ensure developers, local planning authorities and the Welsh Ministers continue to have a legal basis for consulting with Natural Resources Wales on planning applications and DNS applications proposed in areas of flood risk.

This Order also contains transitional provisions. Article 1(3) of this Order provides that where an application for planning permission is submitted before 25 April 2022 and the applicant is required to have consulted a Fire and Rescue Authority but has not done so, the applicant is to be treated as if they have complied with the requirement to consult a relevant Fire and Rescue Authority.

Article 1(4) of this Order provides that the requirement for a local planning authority to consult a Fire and Rescue Authority will not apply in relation to an application for planning permission made before 25 April 2022.

For DNS applications (determined by the Welsh Ministers), neither pre-application nor post-application consultation will be required if the proposed application was notified to the Welsh Ministers under Article 5 of the 2016 Order before 24 January 2022 even where the application is submitted after that date.



## Procedure

Negative.

The Order was made by the Welsh Ministers before it was laid before the Senedd. The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

## Technical Scrutiny

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

## Merits Scrutiny

The following point is 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.**

This Order contains transitional provisions, as explained in the ‘Background and Purpose’ section. Following the end of these transitional arrangements, applicants, local planning authorities and/or the Welsh Ministers (depending on the nature of the application) will be required to consult with Fire and Rescue Authorities when the application falls within a defined category of development on which Fire and Rescue Authorities must be consulted. Fire and Rescue Authorities will also be required to provide a substantive response in accordance with the relevant provisions of the legislation where they are consulted.

The Explanatory Memorandum (“EM”) provides further explanation on these transitional arrangements. However, the English language version of the EM refers to the relevant cut-off dates for these transitional arrangements as 11 April 2022 for planning applications and 10 January 2022 for DNS notifications, as opposed to 25 April 2022 and 24 January 2022 respectively as provided in the Order.

Whilst we accept that the EM does not form part of the Order, this has potential to cause confusion about the effect of the transitional arrangements.

This error does not occur in the Welsh language version of the EM, which refers to the correct dates of 25 April 2022 and 24 January 2022.

## Welsh Government response

I am grateful to the Committee for highlighting inaccuracies in the Explanatory Memorandum (EM). These errors have been corrected and the EM has been withdrawn and re-laid.

### **Legal Advisers**

### **Legislation, Justice and Constitution Committee**

**4 November 2021**



Senedd Cymru  
**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**  
—  
Welsh Parliament  
**Legislation, Justice and Constitution Committee**