

REGULATORY APPRAISAL

TOWN AND COUNTRY PLANNING, WALES

THE PLANNING AND COMPULSORY PURCHASE ACT 2004 (COMMENCEMENT NO.3 AND CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) (WALES) ORDER 2005

Purpose and intended effect

1. This proposed Commencement Order brings further provisions of Part 6 of the Planning and Compulsory Purchase Act 2004 into force, commencement limited to commencing sections 62 (the duty to prepare local development plans) and 63 (preparation requirements), insofar as they have not previously been commenced, together with sections 72 (power to prepare joint plans) and 73 (exclusion of certain representations). This would enable all steps to be taken up to, but not including, the submission of the local development plan (LDP) by local planning authorities (LPAs) for independent examination (carried out by a person appointed by the Assembly). The proposed Order includes a transitional provision, which excludes those local planning authorities who are not ready to proceed at present to prepare local development plans.
2. Local development plans will replace the existing unitary development plans, which set out the planning authority's policies and proposals for the development and use of land in its area.

Background

3. The Planning and Compulsory Purchase Act 2004 is focused on the UK Government's commitment to reform the planning system in England and Wales. The measures include a series of necessary reforms to speed up the development plans system and improve the predictability of planning decisions. The full Regulatory Impact Assessment for the Planning and Compulsory Purchase Act can be viewed on the Office of the Deputy Prime Minister website at www.odpm.gov.uk/planning.
4. Each local planning authority in Wales has a statutory duty under the Town and Country Planning Act 1990 (as amended) to prepare a unitary development plan (UDP) for its area. The first generation of unitary development plans is currently being prepared, but it is clear that there are difficulties in operating the system. They take too long to prepare and it is difficult to adapt them to changing national policies and local circumstances. To overcome this, it is the intention of the primary legislation that unitary development plans will be replaced with a simpler more flexible development plan, the local development plan.
5. Part 6 of the Planning and Compulsory Purchase Act 2004 provides for a new system of land-use development plans in Wales called local development plans (LDPs). Upon full commencement of sections 61 - 78 of this primary legislation (anticipated for autumn 2005), each local planning authority in Wales will be required to prepare a single local development plan for its area (or for joint areas together with neighbouring local planning authorities). Upon adoption the

local development plan will replace any unitary development plan or, where there is no adopted unitary development plan, whatever constitutes the statutory development plan for the authority's area (i.e. extant structure and local plans).

6. The primacy of the development plan in decision-making (section 54A of the Town and Country Planning Act 1991) is retained in the new Planning and Compulsory Purchase Act 2004 (section 38(6)- when commenced).
7. The need for a revised system of development plans was identified in '*Planning: delivering for Wales*' (January 2002), supported in a full public consultation and progressed through primary legislation for England and Wales as supported by the Welsh Assembly Government.
8. Minimal commencement of certain of the provisions in Part 6 of the Act has already taken place due to the implementation of the Planning and Compulsory Purchase Act 2004 (Commencement No.2) (Wales) Order 2004 (SI 2004 No.1813 (W.198)(C.73)), which came into force on 1 August 2004. This empowers the National Assembly for Wales to commence work on the preparation of the further secondary legislation and national guidance required to supplement the legislation relating to the local development plan system, as contained within Part 6 of the Planning and Compulsory Purchase Act 2004.

Risk Assessment

9. This Order proposes to allow those local planning authorities agreed by the Assembly to commence formal procedures of the LDP (in so far as mentioned in the above paragraph).

Options

10. There are three options:
 - (a) Do nothing
 - (b) Validating Steps
 - (c) Make the legislation

(a) Do nothing

11. This option would mean that local planning authorities, that have already sought approval from the Assembly, would not be able to proceed with formal steps of the LDP. The Minister for Environment, Planning and Countryside has already agreed, in guidance issued by the Welsh Assembly Government to all LPAs in October 2004, that local planning authorities would be able to decide whether to proceed with their unitary development plan (UDP) or move to the new LDP without having to adopt or revise their first unitary development plan.
12. This decision followed the consultation exercise on 'Delivering Better Development Plans for Wales' in June 2004, where it was clear that local planning authorities preferred to have the option of moving to local development plans.
13. Of fundamental concern is the impact of the EU requirements for plans not formally adopted by 2006. Any development plan not adopted by July 2006

has to have been the subject of a Strategic Environmental Assessment (SEA). The EU requirements for SEA are prescriptive in a number of respects and require a plan to have been prepared with SEA as an integral part of the process. For a few authorities it may prove difficult to retrofit the SEA to their unitary development plan with confidence that they would not be challenged on the issue at a later date.

14. Doing nothing until the main Order is in place (anticipated in autumn 2005 if the Assembly agrees the Instruments) would mean that those local planning authorities that have sought agreement would need to continue progressing work on their UDP until the Autumn and then move to LDP preparation. Effectively this would result in the lack of any fruitful progress towards getting statutory development plans adopted. The Assembly wishes to have development plans in place as soon as possible and does not wish to delay the process in any way, as this would create further uncertainty for applicants.

(b) Validating steps

15. This option would be to include in the full Part 6 Commencement Order (which is intended to be made in the autumn) a provision which will validate any steps which have been taken by the local planning authorities, in accordance with the relevant provisions of sections 62, 63, 72 and 73, in advance of the Commencement Order in question. Section 122(3)(b) of the Planning and Compulsory Purchase Act 2004 provides the Assembly with very wide powers to enable this to be done.

(c) Make the legislation

16. This option would enable all steps to be taken up to, but not including, the submission of the local development plan for independent examination. It also includes a transitional provision excluding from its operation those local planning authorities, who are not ready to proceed at present, from preparing local development plans.

Benefits

(a) Do nothing

17. This option would cause problems to the local planning authorities and would delay getting up to date development plans in place. However, it would mean that no authority could commence until the full local development plan Regulations were in place.

(b) Validating steps

18. This would enable local planning authorities to agree with the Welsh Assembly Government what steps they can take in conformity in particular with the requirements of section 63 which will be validated retrospectively by the Commencement Order to be made in the Autumn. Local planning authorities will also need to be satisfied that they have a legal basis for incurring expenditure in relation to the preparation of LDPs in advance of the statutory duty to do so taking effect.

(c) Make the legislation

19. This option has the advantage of total legal certainty and would provide the opportunity for those agreed authorities to start within an acceptable timetable.

Costs

20. There will be no additional financial implications for the Assembly arising from this Commencement Order. The cost of processing the Statutory Instrument can be accommodated within existing administration costs budgets.

21. There are no identifiable additional costs for local planning authorities, as they are already required by statute to prepare a unitary development plan for its area. The local development plan will be replacing these. There are no additional costs identified for preparing the new local development plans.

22. There are no identifiable additional costs for other public bodies, business and voluntary interests arising from this Order. These groups, or their umbrella organisations, already actively participate in the development of national planning policy in Wales through joint working and consultation. They have been involved in consultation on '*Planning: delivering for Wales*' leading, in relation to the development plan system in Wales, to the preparation of Part 6 of the Act and are being consulted in relation to the content of the forthcoming LDP Regulations, transitional provisions and national guidance.

Competition Assessment

23. No effects on competition are anticipated.

Consultation

With Stakeholders

24. No formal consultation has been undertaken in relation to this Order. However, consultation on the principle and key issues in relation to an improved development plan system in Wales occurred under the umbrella of the '*Planning: delivering for Wales*'. This was a major public consultation on the reform of the planning system, which issued in January 2002 for 12 weeks with the consultation period ending on 29 April 2002. Consultees included: all AMs; MPs with Welsh constituencies; all local authorities in Wales; all planning authorities in Wales; the Royal Town Planning Institute; conservation/environment organisations (e.g. National Farmers Union (Wales), Council for National Parks (Wales), Welsh Wildlife Trust).

25. A local development plan Stakeholder Group was established in July 2003 to act as a sounding board during the formulation of the detail of the proposed new local development plan system. The Group includes representatives of local government (Welsh Local Government Association), local planning authorities (Planning Officers Society Wales), voluntary sector (Welsh Council for Voluntary Action), private sector (House Builders Federation), academic sector (Cardiff University), environmental bodies (Environment Link), The Royal Town Planning Institute, the Planning Inspectorate and the Welsh Assembly Government's Planning Division. It has met on 5 occasions to date. The minutes of these meeting are available on the Assembly's website.

26. With the new primary legislation in place, a full public consultation on the principles of the local development plan system was undertaken from 8 June to 18 September 2004. This has informed the subsequent drafting of this Order and the main local development plan Regulations, which are going out for consultation in March 2005 (a report on the analysis of responses and the Assembly's response will be part of this package).

With Subject Committee

27. On 26 November 2002, the then Minister for Environment made a Ministerial Statement to Plenary on the '*Planning: delivering for Wales*' programme for change. On 16 January 2003, the Environment, Planning and Transport Committee endorsed the then Environment Minister's proposal to bring forward a programme of secondary legislation to implement the Planning and Compulsory Purchase Bill (at the time) in Wales. I made a Statement to Plenary on 11 November 2003, which provided an update on the '*Planning: delivering for Wales*' programme for change including the Bill and the required new development plan system.

28. The Environment, Planning and Countryside Committee discussed, at its meeting on 14 July 2004, the consultation document 'Delivering Better Development Plans for Wales' (EPC(2)-08-04 p.1), they offered the following comments on the proposed new arrangements:

- Some concern about the transition from existing plans to the new Local Development Plans (LDPs), including the relevance and age of existing plans where Local Planning Authorities did not have Unitary Development Plans (UDPs); and the problems for emerging UDPs caused by the deadlines in the EU Directive on Strategic Environmental Assessment.
- Need for constructive engagement with Local Planning Authorities, and clarification of Assembly sanctions in relation to LDPs.
- Need to ensure a satisfactory relationship between LDPs, the Wales Spatial Plan, and new spatial planning policy such as draft TAN 8 on Renewable Energy, and that Assembly Government is given due weight in the planning process.

29. This Order was notified to the Environment, Planning and Countryside Committee via the list of forthcoming legislation on 2 February 2005. The item was not identified for detailed scrutiny.

Significant Costs

30. No significant costs were identified.

Review

31. The full Commencement and Transitional Provisions Order and the Local Development Plan Regulations proposed for Autumn 2005 will effectively take over from this Order and therefore a review of the effect of this Order will not be necessary.

32. As part of the local development plan system there will be an annual monitoring report carried out by each planning authority and this will monitor the

development plans policies for the area. This report would then aid the authority in deciding whether or not its local development plan needs to be reviewed. This report would, therefore, assist the Assembly in considering whether the procedures for the local development plans need to be reviewed.

33. The Assembly also requests information biannually from each local planning authority on how they are proceeding with their development plans, this will alert the Assembly of any slippage.

34. Another procedure, which is contained in the local development plan system, is the preparation of a timetable. This has to be agreed by the local planning authority and then by the Assembly and if slippage occurs the authority has to notify the Assembly.

Summary

35. After considering the options contained in this assessment it is clear that the option of early commencement under the Assembly Standing Order 24 powers is the most appropriate option for local planning authorities in Wales.