

## **REGULATORY APPRAISAL**

### **TOWN AND COUNTRY PLANNING, WALES**

#### **PLANNING AND COMPULSORY PURCHASE ACT 2004 (COMMENCEMENT NO.4 AND CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) (WALES) ORDER 2005**

##### **Purpose and intended effect of the Measure**

1. The proposed Commencement No.4 Order brings the remaining provisions of Part 6 of the Planning and Compulsory Purchase Act 2004 into force. Part 6 of the 2004 Act applies only in relation to Wales, and sections 61 to 78 of Part 6 establish a system of local development plans (LDP) in place of unitary development plans (UDP) required under Chapter 1 of Part II of the Town and Country Planning Act 1990.
2. In addition to bringing the remaining provisions of Part 6 of the Planning and Compulsory Purchase Act 2004 into force, the proposed Order also brings to an end the transitional arrangements made under the Planning and Compulsory Purchase Act 2004 (Commencement No.3 and Consequential and Transitional Provisions) (Wales) Order 2005 and the effect of the proposed Order is to require all local planning authorities to prepare LDPs.
3. The transitional provisions of the Commencement No.4 Order will mean that those local planning authorities named in the schedule to the Order, (i.e. for Blaenau Gwent, Brecon Beacons, Carmarthenshire, Ceredigion, Flintshire, Gwynedd, Isle of Anglesey, Monmouthshire, Neath Port Talbot, Pembrokeshire, Pembrokeshire Coast, Powys and Swansea), will continue preparation of their UDPs until a further order (i.e. a local order under the Planning and Compulsory Purchase Act 2004 for one or more of the authorities) is made by the National Assembly. Where one of these local planning authorities subsequently resolves its intention to commence preparation of its LDP, it must inform the National Assembly and make that situation known on its web-site.

##### **Background**

4. The Planning and Compulsory Purchase Act 2004 is focused on the 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 plan system and improve the predictability of planning decisions.
5. Each local planning authority in Wales has a statutory duty under the Town and Country Planning Act 1990 (as amended) to prepare a UDP for its area. The first generation of UDPs 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 UDPs will be replaced with a simpler more flexible development plan, the LDP

6. The need for a revised system of development plans was identified in *Planning: delivering for Wales (January 2002)*, supported in a full public consultation (in January 2002) and progressed through primary legislation for England and Wales as supported by the Welsh Assembly Government.
7. Part 6 of the Planning and Compulsory Purchase Act 2004 provides for a new system of land-use development plans in Wales called LDPs. Upon full commencement of sections 61 - 78 of this Act each local planning authority in Wales will be required to prepare a single LDP for its area (or for joint areas together with neighbouring local planning authorities). Upon adoption the LDP will replace any UDP or, where there is no adopted UDP, whatever constitutes the statutory development plan for the authority's area (i.e. extant structure and local plans).
8. The Planning and Compulsory Purchase Act 2004 (Commencement No.3 and Consequential and Transitional Provisions) (Wales) Order 2005 was made on 26 April 2005. Its effect is to enable nine named local planning authorities, which had expressed a wish to commence work on the preparation of their LDPs to do so. It was not a full Commencement Order in relation to LDP preparation for these nine authorities, as it limited work that could be commenced to only the earliest stages of plan preparation.
9. This Order is being processed in tandem with The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005.

### **Risk assessment**

10. The primary legislation assumes that the National Assembly will commence the statutory provisions and make Regulations in relation to the new LDP system.
11. Without the Commencement No.4 Order the need for a revised system of development plans, which was identified in *Planning: delivering for Wales*, could not be adequately implemented through secondary legislation supported by national planning policy and guidance. Wales would continue with a UDP system, which would be contrary to the decision previously made by the Assembly Government that it should be superseded. It would also mean that the Assembly would be negating its duties in respect of primary legislation, which Parliament expects it to implement.
12. In relation to the transitional provisions contained in the draft Commencement No.4 Order there is a risk to local planning authorities of legal challenge, and to the UK Government of EU infraction, involved in permitting local planning authorities to continue work on UDPs which are not compliant with the requirements of the Strategic Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, where adoption of the UDP by the local planning authority does not take place by the SEA deadline of 21 July 2006.

13. The Welsh Assembly Government issued an *Interim Good Practice Guide on Strategic Environmental Assessment of Unitary Development Plans* in September 2004; the Guide intends to show how the European Directive (2001/42/EC) can be complied with and incorporated into the existing sustainability appraisal procedure and aims to help local planning authorities in considering and carrying out their strategic environmental assessments in the transitional period.
14. The draft Commencement No.4 Order permits specific local planning authorities to continue their UDPs to adoption. However, if the Assembly Government considers, in due course, that one or more local planning authorities should stop UDP work it can make a Local Order under the Planning and Compulsory Purchase Act 2004 which would have the effect of requiring the preparation of an LDP(s) for that area. Such an action could be triggered for example where the Welsh Assembly Government considers there to be significant risk of EU infringement proceedings.

### **Options**

15. There are three options:

**Option 1:** Do Nothing.

**Option 2:** Make the Legislation

**Option 3:** Make different transitional provisions.

#### Option 1: Do Nothing

16. To not make the Order would mean that the Assembly Government would be negating its duties in respect of primary legislation, which Parliament expects it to implement. If full commencement by this Order is not approved then the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 could not be approved either. (It is considered that there is no non-regulatory alternative to enable the new LDP system to operate as intended in primary legislation.)

#### Option 2: Make the Legislation

17. The current UDP system is regulated by The Town and Country Planning Act 1990 and the associated Town and Country Planning (Development Plan) Regulations 1991. The proposed Commencement No.4 Order and associated LDP Regulations are intended to provide a similar statutory basis for the new system.

#### Option 3: Make different transitional provisions

18. Nine named local planning authorities have already been authorised to stop work on their emerging UDPs or first reviews of those plans under the Planning and Compulsory Purchase Act 2004 (Commencement No.3 and Consequential and Transitional Provisions) (Wales) Order 2005.

19. Therefore, the remaining authorities would have no Regulations to enable completion of their UDPs and regulate their progression to the new LDP system to operate as intended in primary legislation.

## **Benefits**

20. The commencement and transitional provisions are essential to allow the remaining authorities to start work on their LDPs and to provide other sectors with certainty about the start of the new system and transitional arrangements.

## **Costs**

21. It is anticipated that there will be no additional financial implications for the Assembly arising from the Order. The cost of processing the Statutory Instrument can be accommodated within existing administration costs budgets.
22. There are no identifiable additional costs for local planning authorities, as each is already required by statute (and in accordance with extant Regulations) to prepare and maintain a UDP for its area. The transitional provisions do not require “twin tracking” of UDPs and LDPs (starting the LDP plan while the UDP plan is still running), thus there are no overlapping costs.
23. There are no identifiable additional costs for other public bodies, business and voluntary interests arising from these Regulations.

## **Competition Assessment**

24. No effects on competition are anticipated. In relation to businesses, the proposed changes will not distort competition in the property development market. No firm has more than 10% of the market share. The implementation of the proposals will not affect any one firm substantially more than others or change the market structure. The market is not one that is affected by rapid technological change. It is hoped that the changes will lead to increased property development, though this is likely to be through increases in capacity of existing firms (for example house building). The changes, as currently outlined will not increase the set-up, or ongoing costs for new or potential firms over and above the existing town and country planning system. Indeed it is expected that the overall effect of the reforms will reduce costs to all firms by increasing the speed, equity and certainty of the system. The proposals are very much about changing processes; they will not alter the existing balance of economic, social and environmental objectives in national policy and will not restrict the ability of firms to choose the price, quality, range or location of their products.

## **Enforcement and sanctions**

25. The proposals will be enforced by a number of bodies: the Welsh Assembly Government, local planning authorities, and the Planning Inspectorate.
26. The Welsh Assembly Government will play a key role in ensuring that the requirements set out in the legislation as regards the preparation and adoption of LDPs and the transitional provisions are met. If the requirements are not met the Welsh Assembly Government, on behalf of the National Assembly for Wales, can, as with the current system, intervene in the process. The Welsh Assembly Government will continue

to monitor progress by local planning authorities on development plan preparation.

27. The Planning Inspectorate will be responsible for undertaking the independent examination of LDPs and ensuring that the policies and proposals they contain are sound and appropriate.

## **Consultation**

### With Stakeholders

28. The draft Commencement No.4 Order (and the related draft Regulations) were the subject of an 8-week combined targeted consultation between 14 March and 9 May 2005. A list of the consultees is at Annex A.
29. Only 5 respondents made specific comments on the draft Order and these mainly on detailed matters within the transitional provisions. A summary of the consultation responses is attached at Annex B; it indicates the changes made to the draft Order as a direct result of comments received during the consultation.
30. An LDP Steering Group was also established in July 2003 to act as a sounding board during the formulation of the detail of the new system. This group includes: representatives of local government (the Welsh Local Government Association); local planning authorities (Planning Officers Society Wales); the voluntary sector (Welsh Council for Voluntary Action); the private sector (House Builders Federation); the academic sector (Cardiff University); environmental bodies (Environment Link); The Royal Town Planning Institute; the Planning Inspectorate and the Assembly Government's Planning Division. It has met on several occasions and the minutes of these meetings are available on the Assembly web-site; the group remains operative.

### With Subject Committee

31. 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. The current Minister made Statements to Plenary on 11 November 2003, and a Cabinet Written Statement was issued on 23 November 2004. These provided updates on the '*Planning: delivering for Wales*' programme for change including the primary legislation and the required new LDP system.
32. The Environment, Planning and Countryside Committee, discussed the consultation document '*Delivering Better Development Plans for Wales*' on 14 July 2004 (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 LDPs, including the relevance and age of existing plans where local planning authorities did not have 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; and
- 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 the Welsh Assembly Government is given due weight in the planning process.

33. Subsequently the Minister for Environment, Planning and Countryside determined that each local planning authority should determine whether it progressed its UDP to adoption (i.e. to become the statutory land-use development plan for the purposes of section 54A of the Town and Country Planning Act 1990) or moved to LDP preparation.

34. The Environment, Planning and Countryside Committee scrutinised this Order and the associated Town and Country Planning (Local Development Plan) (Wales) Regulations at its meeting on 13 July 2005 (EPC (2)09-05 (p.4)) and (EPC(2)-09-05 (p.5)). The Committee recommended approval of the Order without amendment.

#### **Monitoring and review**

35. Provisions of the LDP system in the 2004 Planning Act requires the preparation of a plan preparation timetable by the local planning authority, to be agreed by the authority and the National Assembly. If slippage occurs the authority has to notify the Assembly Government. The Assembly also monitors the progress of development plan preparation by local planning authorities on a bi-annual basis, and this will alert the Assembly Government of any slippage; this monitoring will include UDP and LDP progress.

#### **Summary**

36. After considering the options contained in this assessment it is clear that the regulatory option embodied in this SI is in line with the objectives of the Assembly Government's "*Planning: delivering for Wales*" programme, and is considered the most effective means of addressing the issue.

## **ANNEX A – CONSULTEES (Consultation 14 March – 9 May 2005)**

Chief Executives and Chief Planning Officers of the 25 Local Planning Authorities in Wales,  
British Waterways,  
Campaign for the Protection of Rural Wales,  
Cardiff Chamber of Commerce,  
Cardiff University,  
Confederation of British Industry Wales,  
Children’s Commissioner,  
The Civic Trust for Wales,  
Council for National Parks,  
Council for Racial Equality (Wales),  
Country Land and Business Association,  
Countryside Council for Wales,  
Disability Wales,  
Environment Agency Wales,  
Environmental Services Association,  
Equal Opportunities Commission,  
Forum for the Future,  
Friends of the Earth,  
Glamorgan Gwent Archaeological Trust Ltd,  
Gwynedd Archaeological Trust,  
House Builders Federation,  
Landscape Institute Wales,  
The Law Society,  
National Farmers Union of Wales,  
Network Development,  
Planning Aid,  
Royal Institute of Chartered Surveyors Wales,  
Royal Society for the Protection of Birds,  
Royal Town Planning Institute in Wales,  
South Wales Police,  
SP Power Systems,  
Sustrans Cymru,  
Wales Environment Link,  
Wales Planning Forum,  
Wales Association of Voluntary Councils,  
Welsh Association of Town & Community Councils,  
Welsh Council for Voluntary Action,  
Welsh Development Agency,  
Welsh Language Board,  
Welsh Local Government Association.

The consultation was also placed on the Assembly web-site and a notice made available to the technical press.

**ANNEX B - SUMMARY OF RESPONSES TO CONSULTATION ON DRAFT ORDER (14/03/05 – 09/05/05)**

**- DRAFT COMMENCEMENT & TRANSITIONAL PROVISIONS ORDER EXPLANATORY NOTES**

Ref. See definitions below	ISSUE Page / Para	SUMMARY OF RESPONSE	RECOMMENDED ACTION FOR ORDER	Consider for Policy /Guidance
5	Part 2 – Transitional provisions: 9 / ii	Guidance referring to paragraph 16 of the Revised Initial Guidance (making clear public statement) remains ambiguous. Local press notice, letter to representatives or web based statement – each has the potential to reach different audiences.	<b>ACTION</b> – Draft Order clarifies publication to be on LPA web-site	
12	9 / ii	Optional paths need to be offered for those UDPs that are at post-inquiry stages, so that LPA can consider which “preferred path” to follow. Having received an Inspector’s report does not necessarily mean early adoption of UDP will follow. There may be significant work involved before proposed modifications can be issued & possibility of 2 <sup>nd</sup> public inquiry cannot be dismissed. Those UDPs may have to be subjected to SEA, requiring further work when transfer to commencement of LDP would be the preferable option	<b>ACTION</b> – LPAs can decide to move to LDP preparation at any stage	
5	9 / iv	Which plan prevails is unclear. Does the UDP only prevail over ‘other plans’, and that any local plan or structure plan prevails over the UDP?	NO ACTION – (adopted UDP prevails)	
18	10 / x	Re-use of ‘work undertaken prior to commencement of Part 6 of the Act’ is sensible in the interests of efficiency and economical use of scarce time / officer & financial resources.	NO ACTION – (support noted)	



5	10 / xi	Existing policy statements / saving policies - Reconsideration is required on this point. There should be a facility to save policy where such policy is in accord with SA.	NO ACTION – (new LDP system is as much about process as content) – (LPA could approve for DC purposes)	
12	10 / xi	Total abandonment of an emerging UDP, leaving a ‘vacuum’ in terms of up-to-date policy coverage, could be very negative and damaging. Ideally there should be some ways of “saving” elements of a UDP that has been taken to advanced stage when LPA transfers to LDP preparation; clarification on UDP draft policy status would be welcomed.		
29	10 / xi	Has consideration been given to the development of a set of ‘model’ strategic policies incorporated into LDP guidance to assist with plan preparation.	NO ACTION– (model policies will not be in LDP Guidance; the AssGvt will consider whether there is a need to clarify which national planning policies need to be reiterated in LDPs and which policies can stand alone.)	+

- 5 – Pembrokeshire National Park Authority
- 9 – Vale of Glamorgan County Borough Council
- 12 – Isle of Anglesey County Council
- 18 – Campaign for the Protection of Rural Wales
- 29 – Flintshire County Council