

# **Explanatory Memorandum to**

**The Town and Country Planning (Development Management Procedure) (Wales) Order 2012**

**Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012**

**Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2012**

**Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2012**

**Town and Country Planning (Compensation) (Wales) Regulations 2012**

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales 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 following regulations:

- Town and Country Planning (Development Management Procedure) (Wales) Order 2012,
- Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012
- Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2012
- Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2012
- Town and Country Planning (Compensation) (Wales) Regulations 2012

and I am satisfied that the benefits outweigh any costs.

**John Griffiths AM**

Minister for Environment and Sustainable Development

10 March 2012

## **1. Description**

### ***Town and Country Planning (Development Management Procedure) (Wales) Order 2012***

1.1 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 replaces the existing Town and Country Planning (General Development Procedure) Order 1995 (as amended) as it relates to Wales.

1.2 The 2012 Order includes all amendments that have been made to date to the original 1995 as these relate to Wales. Additionally the 2012 Order incorporates provisions (that have all been separately consulted upon) related to the introduction of the on-line National Standard Application Form for use by local planning authorities, detailed provisions to enable local planning authorities to introduce Local Development Orders, and a change in the requirement for local planning authorities to consult the Sports Council for Wales when determining planning applications for developments that may impact on playing fields. It updates or removes references to bodies where they no longer exist or where their functions have been transferred to other bodies. It also contains some transitional provisions and savings.

1.3 Some changes in layout for clarity, including the order of the individual articles, have also been made to the 2012 Order. Unlike the 1995 Order which was an order setting out the town and country planning procedures for handling planning applications in England and Wales (the provisions in England only were cancelled and replaced by a new Development Management Procedure Order in England in 2010), the 2012 Wales Order refers to procedures only for Wales.

### ***Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012***

1.4 The Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 replace the existing the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended) as they relate to Wales.

1.5 The 2012 Regulations include all amendments that have been made to date to the original 1990 Regulations as these relate to Wales, and additionally incorporate provisions (that have been separately consulted upon) related to the introduction of the on-line National Standard Application Form for use by local planning authorities. They also contain some transitional provisions and savings.

1.6 Some changes in layout for clarity, including the order of the individual provisions, have also been made to the 2012 Regulations. Unlike the 1990 Regulations which were regulations setting out the town and country planning procedures for handling listed buildings and conservation area consents in both England and Wales (and amended in relation to Wales), the 2012 Wales

Regulations, which revoke the 1990 Regulations as they relate to Wales, refer to procedures only for Wales.

***Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2012***

1.7 The Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2012 amend the existing Town and Country Planning (Control of Advertisements) Regulations 1992 (which make provision, among other things, for the form of applications for express consent to display an advertisement), as they relate to Wales.

1.8 In particular, the 2012 amendments incorporate provisions (that have been separately consulted upon) related to the introduction of the on-line National Standard Application Form for use by local planning authorities.

1.9 Regulation 2 of these Regulations substitutes regulation 9 of the 1992 Regulations. Substituted regulation 9 requires applications for express consent to be made on a form published by the Welsh Ministers and specifies the procedure for making an application for express consent. The form was published on the Planning Portal website and is available from the website and local planning authorities.

***Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2012***

1.10 The Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2012 amend the existing Town and Country Planning (Trees) Regulations 1999 (which make provision, among other things, for the form of tree preservation orders and for applications for consent to carry out work on trees subject to an order), as they relate to Wales.

1.11 In particular, the 2012 amendments incorporate provisions (that have been separately consulted upon) related to the introduction of the on-line National Standard Application Form for use by local planning authorities

1.12 Regulation 2(2) of these Regulations inserts a new regulation 9B into the 1999 Regulations to make provision for the form and content of applications for consent for tree works in Wales. Consequential amendments are made to the Schedule to the 1999 Regulations by regulation 2(3).

***Town and Country Planning (Compensation) (Wales) Regulations 2012***

1.13 Linked to the Planning Permission (Withdrawal of Development Order or Local Development Order) (Compensation) (Wales) Order 2012 which amends the provisions for compensation for prescribed development should a development order or local development order be withdrawn (this order has been subject to the affirmative resolution procedure, and was approved by the National Assembly for Wales on 6 December 2011), the Town and Country Planning (Compensation) (Wales) Regulations 2012 prescribe the types of development, the manner in which planning permission should be withdrawn, and the notice to be given of withdrawal

## **Matters of special interest to the Constitutional and Legislative Affairs Committee**

2.1 There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

### **3. Legislative Background**

3.1 The Welsh Ministers in exercise of the powers conferred on the Secretary of State by sections 59, 61(1), 61A, 62, 65, 69, 71, 74, 77, 78, 79(4), 188, 193, 196(4), 293A and 333(7) of, and paragraphs 1 and 2 of Schedule 1A, and Schedule 4A to, the Town and Country Planning Act 1990 and in exercise of the powers conferred on the National Assembly for Wales by sections 88 and 122(3) of the Planning and Compulsory Purchase Act 2004, now exercisable by them, have made the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

3.2 The Welsh Ministers, also in exercise of the powers conferred on the Secretary of State by sections 2, 10, 11, 19, 20, 21, 25, 28, 29, 32, 42, 74, 82, 82B, 82F, 91 and 93 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and now exercisable by them, have made the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012

3.3 The Welsh Ministers, also in exercise of the powers conferred on the Secretary of State by sections 220 (1) and (2A) and 333(1) of the Town and Country Planning Act 1990, and now exercisable by them, have made the Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2012.

3.4 The Welsh Ministers, also in exercise of the powers conferred on the Secretary of State by sections 198(8) and 333(1) of the Town and Country Planning Act 1990, and now exercisable by them, have made the Town and Country Planning (Trees) Amendment) (Wales) Regulations 2012,

3.5 The Welsh Ministers, in exercise of the powers conferred by section 108(2A), (3C), (3D), (5), and (6) of the Town and Country Planning Act 1990, now exercisable by them, have made the Town and Country Planning (Compensation) (Wales) Regulations 2012

3.6 These instruments are all subject to the negative resolution procedure, and are laid before the National Assembly for Wales so giving full effect to provisions relating to the introduction of the online national standard application form and local development orders.

## **4. Purpose and intended effect of the legislation**

4.1 An earlier consultation on the 'Changes to the Development Control System in Wales' (July 2006), introduced a number of proposals for change to the development management system, one of which was the proposed introduction of an on-line national standard application form (normally referred to as '1APP') and the use of local development orders (LDOs) by local planning authorities. Separate subsequent consultations in July 2010 set out in more detail the use of '1APP' and LDOs, including supporting guidance. The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (referred to below as 'DMPWO 2012') sets out the associated procedures for both these provisions (there are also linked, but separate, regulations that have been amended to enable the full use of these powers).

### ***Online National Standard Application Form (1APP)***

4.2 The use of electronic communications to submit planning applications offers many advantages to both applicants and local planning authorities. To achieve this through the 'Planning Portal' (an online website portal for planning in England and Wales, supported by the Department for Communities and Local Government and the Welsh Government) has required a standard approach across Wales. This assists those applicants/planning agents who submit applications to different planning authorities, as a consistent approach enables them to be clear about the extent of information required for an application to be processed. Using '1APP' also enables a single application to be submitted for a range of consents, directly saving applicants' time.

4.3 There was general support for the use of '1APP' following the 2006 Consultation, and the 2010 consultation provided guidance – building on the experience and feedback from using '1APP' in England and Wales – for both local planning authorities and applicants, setting out the detailed requirements to enable the effective use of '1APP'.

4.4 The principle provisions relating to the use of '1APP' are set out in the DMPWO 2012, but to enable the '1APP' provisions to be fully introduced, other linked, but separate, related planning regulations have been prepared and amended where necessary, namely:

- Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012
- Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2012
- Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2012

4.5 These are all subject to the negative resolution procedure, and are being laid before the National Assembly for Wales in parallel with the other

associated regulations covering the introduction of '1APP' online national standard application form.

### ***Local Development Orders***

4.6 A Local Development Order (LDO) is an order made by a local planning authority (LPA), through which permitted development rights (i.e. reducing the need to seek planning permission), additional to those granted nationally by the Welsh Government, are granted to certain types of development (specified in the order) within a certain area (also specified in the order).

4.7 There was limited interest, as in England, in the use of local development orders across Wales, in the responses received in 2006. However the issue was subsequently reviewed by the previous UK Government and legislation introduced in the Planning Act 2008 which removed the requirement that local development orders should be linked to adopted local development plans.

4.8 Subsequently the then Welsh Assembly Government issued a further detailed consultation (in July 2010) setting out proposed detailed provisions to enable local planning authorities to establish local development orders.

4.9 The principal provisions on the procedures for local planning authorities to use when proposing local development orders for specified areas and/or types of development to be covered by a local development order, including publicity/notification, consultation, adoption, and monitoring are set out in the DMPWO 2012.

4.10 However to enable the use of the local development orders to be fully introduced, other linked, but separate, related planning regulations have been prepared, namely:

- Planning Permission (Withdrawal of Development Order or Local Development Order) (Compensation) (Wales) Order 2012. This order amends the provisions for compensation for prescribed development should a development order or local development order be withdrawn. This order has been subject to the affirmative resolution procedure, and was approved by the National Assembly for Wales on 6 December 2011. The order has been made and came into force on 31 January 2012.
- Linked to the above Order, the Town and Country Planning (Compensation) (Wales) Regulations 2012 prescribe the types of development, the manner in which planning permission should be withdrawn, and the notice to be given of withdrawal. These regulations are subject to the negative resolution procedure, and are being laid before the National Assembly for Wales in parallel with the other associated regulations covering local development orders, as previously referred to in this explanatory memorandum.

4.11 Associated guidance on the detailed procedures for making local development orders has also been developed.

## **5. Implementation**

5.1 It is intended that the instruments will come into force on 30 March 2012.

## **6. Consultation**

6.1 Public consultation setting out proposals for the use of the online national standard application form took place from 5 August 2010 to 12 November 2010, and the consultation document was available on the Welsh Government website at:

<http://wales.gov.uk/consultations/planning/1appconsultation/?lang=en&status=closed>

6.2 Public consultation setting out proposals for local development orders took place from 26 July 2010 to 29 October 2010, and the consultation document was available on the Welsh Government website at:

<http://wales.gov.uk/consultations/planning/localdevorders/?lang=en&status=closed>

## **The Town & Country Planning (Development Management Procedures) (Wales) Order 2012**

## **Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012**

## **Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2012**

## **Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2012**

## **Town and Country Planning (Compensation) (Wales) Regulations 2012**

# **Regulatory Impact Assessment**

## **1. Purpose and intended effect**

1.1 The Town & Country Planning (Development Management Procedures) (Wales) Order 2012 is the principal Instrument to enable the introduction of the on-line national standard application form ('1APP') and the use of local development orders (LDOs) which will support improvements in the planning application process. Including earlier legislative amendments to the original order in the 2012 Order into one consolidated order for Wales, as well as improvements in text and a more logical sequence of articles in the order will aid clarity and make the provisions on the 2012 Order more accessible for all users. The technical change in consultation requirements for local planning authorities with the Sports Council for Wales when considering planning applications supports revisions made in Technical Advice Note 16 on 'Sport, Recreation, and Open Space' (2009).

1.2 The following regulations, which are also the subject of this regulatory impact assessment, are required to enable the full introduction of powers relating to the on-line national standard application form ('1APP'), namely:

- Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012
- Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2012
- Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2012

1.3 The Town and Country Planning (Compensation) (Wales) Regulations 2012, which are also the subject of this regulatory impact assessment, are required to enable local planning authorities to introduce local development



orders. Separately the Planning Permission (Withdrawal of Development Order or Local Development Order) (Compensation) (Wales) Order 2012, which is linked to the use of local development orders, has been subject to the affirmative resolution procedure, and was approved by the National Assembly for Wales on 6 December 2011.

### ***Online National Standard Application Form (1APP)***

1.4 An online national standard application form enables a consistent approach to the handling of planning applications, including the accompanying information required to be submitted with the application, assist applicants who submit applications to different planning authorities. Additionally '1APP' also enables a single application to be submitted for a range of consents, directly saving applicants' time. Alongside the benefits of electronic communications, the use of '1APP' would support more timely processing of planning applications, with the objective of minimising delays resulting from applications being incomplete or missing vital information.

### ***Local Development Orders (LDOs)***

1.5 The use of local development orders (LDOs) by a local planning authority (LPA) would encourage particular developments to meet local needs (and reduce costs for applicants), and support sustainable development and facilitate economic recovery. A local development order would mean that certain developments, as specified in a local development order, would not require planning permission.

## **2. Background**

2.1 The 25 Local planning authorities in Wales (22 unitary authorities and 3 National Park authorities) in 2010 received over 23,300 planning applications. These ranged from relatively small works on an individual householder's property to major housing and commercial development. A key objective of the Planning & Compulsory Purchase Act 2004 and the Planning Act 2008 has been to enable improvements in the planning application process.

### ***Online National Standard Application Form (1APP)***

2.2 The requirement to use an online standard application form ('1APP') ensures a consistent and timely approach to submission by the applicant and to improvements in handling of applications by local planning authorities. The electronic platform – provided through the Planning Portal – has been used by all local planning authorities in England and Wales since 2008, and there has been a steady increase in the submission of on-line applications each year since then, and currently in Wales an average of 35-40% of applications are submitted electronically,

2.3 All local planning authorities across Wales currently use '1APP' to accept electronic applications. Informed by this experience and to underline the importance of this service, the Welsh Government has revised the regulations (principally through the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, but also the other regulations referred to above in paragraph 1.2 above, to require the use of '1APP' by local planning authorities. Although it is possible to use the '1APP' to submit applications on paper, the full benefits of standardisation will only be realised through its use as part of the electronically based process, and therefore the use of the electronic version is encouraged wherever possible.

2.4 Alongside the benefits of electronic communications, the use of '1APP' would assist in timely processing of planning applications, with the objective of minimising delays resulting from applications being incomplete or missing vital information. To overcome this issue, the process of submitting applications for planning permission and other consents offers:

- Greater certainty for applicants about what is required
- Reduction in duplicated information
- Sufficient information at the start of the determination process to enable local planning authorities to make decisions within the relevant statutory periods
- Thorough consideration of all design aspects of the proposal to encourage greater quality of development before submission.

### ***Local Development Orders (LDOs)***

2.5 The discretionary power for an LPA to make a local development order (LDO) is intended to assist in the delivery of the planning application process. LDOs will, in effect, grant permission for the type of development specified in that Order and by so doing negate the need for a planning application to be made by the developer.

2.6 Town and country planning legislation grants a general permission for various types of relatively small-scale and normally uncontentious development without the need to make a planning application. These provisions, known as permitted development rights, are designed to ensure that people have a reasonable degree of freedom to improve their properties. They also relieve local planning authorities of the need to determine numerous, routine planning applications. Local development orders can therefore be seen as an extension of permitted development, but decided upon locally in response to local circumstances within an overall framework provided by the local planning authority.

2.7 The LDO can relate to the whole of the LPA area, parts of the area or apply to a specific site, or type of development. The scope of the LDO would reflect local circumstances and can be used to achieve a wide variety of objectives, and promote a wide range of behaviours by developers to serve communities, planning, environmental or regeneration objectives.

2.8 The Welsh Government's commitment to improve the planning application process includes changes bringing about both process improvements and removal of the need for planning permission, where appropriate and proportionate. The use of local development orders would also be a vehicle to assist local economic and community development that reflect local circumstances, and could additionally potentially support the use of Enterprise Zones to assist economic development.

### **3. Options**

(i) Do nothing – continue with the existing system with no full commencement of the relevant provisions of the Planning & Compulsory Purchase Act 2004 and the Planning Act 2008 or amendments to related planning regulations.

(II) Introduce the powers to make the use of the online national standard application form mandatory, building on the already increasing submission of online planning applications, and also enable local planning authorities to have the powers to establish local development orders.

Option (ii) is the Welsh Government's preferred option.

### **4. Costs and Benefits**

**Option (i) Do nothing – continue with the existing system with no full commencement of the relevant provisions of the Planning & Compulsory Purchase Act 2004 and the Planning Act 2008 or amendments to related planning regulations.**

4.1 Not fully implementing the provisions of the Planning & Compulsory Purchase Act 2004 and the Planning Act 2008, would mean that the full benefits of using the online national standard application form would not be realised, and local planning authorities would not have the powers to make local development orders, both measures aimed at supporting the Welsh Government's agenda to bring about improvements in the planning application process that would assist economic regeneration.

**Option (ii) Introduce the powers to make the use of the online national standard application form mandatory, building on the already increasing submission of online planning applications, and also enable local planning authorities to have the powers to establish local development orders.**

***The online national standard application form (1APP)***

4.2 All 25 local planning authorities in Wales (the 22 unitary authorities and the 3 National Park authorities) have been using the online national standard application form (1APP), provided through the Planning Portal online platform, since October 2008. There are therefore anticipated to be no overall significant additional costs for local planning authorities in implementing the 1APP provisions in the 2012 Order and the associated changes to planning regulations, which are aimed at ensuring the level of information required to support a planning application is consistently applied and commensurate with the size of the development proposed ie as expected, more information is required for large-scale, more complex applications. There may be some modest costs for LPAs associated with consultation requirements for setting local information requirements for major applications (but these are not anticipated to be significant) as well as possibly some costs attached to some LPAs who continue printing off applications submitted electronically, but these will reduce over time as working practices in handling applications increasingly make use of the online service.

4.3 Many authorities have, or are, reviewing their in-house planning application processes, which will be supported through the 1APP online standardised service. Increasingly planning applications are being prepared by applicants using a range of drawing software, so the use of the online application service will complement such technical developments; indeed regular monitoring of the take-up of online applications show increasing usage, with an average current take-up across Wales of 35-40% of applications being submitted online.

### ***Local Development Orders***

4.4 As the use of Local Development Orders is a discretionary power for local planning authorities, it is not possible at this stage to estimate benefits or costs as it is not known to what extent the power might be used, as the form of the local development order is likely to vary from one authority to another, and would be prepared to suit specific local needs and requirements type.

4.5 Developers would benefit from having local development orders in place, by not having to apply for a specific planning permission and pay the associated fee. Fees vary by type and size of development. The certainty provided and the ability to deliver development more quickly should benefit developers as well as the removal of the administrative burden of making applications. For 2010, 68% of all applications were processed within 8 weeks, with the best performing local planning authorities determining over 80% of applications within 8 weeks. This shows that there is scope for LDOs to reduce the time it takes to progress a development. Delays of more than 8 weeks can be costly particularly for small businesses adding to uncertainties.

4.6 There could also be benefits for communities generally if LPAs decide to use LDOs to assist in the regeneration of particular areas. Householders could also benefit from not having to apply for planning permission.

4.7 Although LPAs will entail costs in producing an LDO, it could be possible that in the longer term it may be more resource efficient to do so by reducing the number of applications for planning permission having to be decided and reducing the number of appeals to be processed.

4.8 LPAs wishing to prepare LDOs to assist in encouraging specific local developments will incur costs. Much of this cost is likely to be related to the upfront costs associated with preparation of an LDO prior to it being made although this may be minimised by running the LDO process concurrently with other consultations, such as supplementary planning guidance. It is possible that a LPA may choose to make a LDO even where the resource costs exceed any savings in the longer term. However as this is a discretionary power and in such circumstances LPAs would only be doing so where they believe that the cost is worthwhile in that it is proportionate to the benefit delivered through the implementation of local planning policy.

4.9 Total planning application fee income for Wales in 2009/2010 is estimated at approximately £9.5m. For those LPAs that introduce LDOs, there would be a reduction in fee income where, through the LDO, development can be carried out without the need to apply for planning permission (for example a 5% loss of fee income because of LDOs, could mean lost revenue across Wales of about £475,000). However it is not possible to assess how much fee income could be lost, as the use of LDOs is discretionary, although the reduction in costs incurred by LPAs in processing applications could possibly offset any lost fee income. In addition not all 25 LPAs are likely to introduce LDOs, which will depend on local circumstances.

## **5. Wider Impact**

5.1 The new Town & Country Planning (Development Management) (Wales) Order 2012 and the associated and linked regulations referred to in paragraphs 1.2 and 1.3 above, introducing specific provisions for use of the online national standard application form, and for the use of local development orders would not necessarily impact on any one particular community group, and there are no anticipated specific race, health or spatial impacts.

## **6. Consultation with Small Businesses**

6.1 Notification of the (separate) consultation documents on the use of the online national standard application form and the use of local development orders was sent to the Confederation of British Industry Wales and the Federation of Small Businesses in Wales, as well as being posted onto the Welsh Government website.

## **7. Competition Assessment**

7.1 It is not considered that the proposed changes would have a disproportionate impact on any particular sector. Therefore it is considered unlikely that there would be appreciable competition impact arising from the use of the online national standard application form and the introduction of local development orders.

## **8. Consultation**

8.1 Both the use of the online national standard application form and the introduction of local development orders, have each been the subject of two separate rounds of consultation, in 2006 setting out the principles of both approaches, and in 2010 setting out more detailed proposals, as well as associated guidance. Responses to both rounds of consultations showed support for both measures to improve the planning application process.

**Welsh Government**

**March 2012**