

Explanatory Memorandum to the Town and Country Planning (Local Development Plan) (Wales) (Amendment) Regulations 2015

2015 NO.

This Explanatory Memorandum has been prepared by the Planning Directorate 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 Town and Country Planning (Local Development Plan) (Wales) (Amendment) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Carl Sargeant
Minister for Natural Resources
3 August 2015

1. Description

1.1 These Regulations amend The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 (the “2005 Regulations”) to simplify certain aspects of the local development plan process. These Regulations:

- remove the statutory requirement to advertise consultation stages in the local press;
- allow local planning authorities to make revisions to the local development plan where the issues involved are not of sufficient significance to warrant the full procedure, without going through the full revision process;
- eliminate the need to consult on alternative sites following the deposit consultation; and
- make minor and consequential amendments.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 None.

3. Legislative background

3.1 The Welsh Ministers rely on provisions in the Planning and Compulsory Purchase Act (“the 2004 Act”) to make these regulations.

3.2 Section 62 of the 2004 Act requires the local planning authority (“LPA”) to prepare a local development plan (“LDP”) for there area. It also enables the Welsh Ministers to prescribe the form and content of the plan and matters to which the LPA must have regard when preparing an LDP.

3.3 Section 63 of the 2004 Act requires an LDP to be prepared in accordance with a community involvement scheme and a timetable. A community involvement scheme is the LPA’s policy as to the involvement in the exercise of the LPA’s functions in relation to LDPs of certain persons. The Welsh Ministers may prescribe such persons. They may also prescribe other requirements in connection with the scheme and timetable.

3.4 Section 69 requires an LPA to carry out a review of their LDP at prescribed times. It also enables the Welsh Ministers to prescribe the form of the review and requirements in connection with its publication.

3.5 Section 77 of the 2004 Act provides that the Welsh Ministers may by regulations make provision in connection with the exercise of functions conferred by Part 6 on any person. The regulations may in particular make provision as to the matters specified in paragraph (2)((a) to (k). Paragraph (2)(b) refers to the procedure to be followed in the preparation of local development plans.

3.6 Section 122 of the 2004 enables different provision to be made for different purposes in subordinate legislation and supplementary, incidental, consequential, saving or transitional provisions as the Welsh Ministers think necessary or expedient.

3.7 Section 39 of the 2004 Act applies to any person who exercises any function under Part 6 of the 2004 Act in relation to an LDP. The Regulations are made under Part 6. The Welsh Ministers must exercise those functions with the objective of contributing to the achievement of sustainable development and for these purposes the Welsh Ministers must have regard in particular to the desirability of achieving good design. For these purposes the Welsh Ministers must have regard to the national policies and advice contained in guidance issued by the Welsh Ministers for this purpose.

3.8 The Regulations are subject to the Assembly's negative procedure.

4. Purpose & intended effect of the legislation

4.1 The purpose of this legislation is to amend the 2005 Regulations in order to simplify the LDP procedures. These amendments are done in response to the outcomes of the local development plan process refinement exercise (further information on this is contained in the RIA (Part 2 of this document); the Process Refinement Exercise (PRE) Report and the consultation report, both mentioned below).

4.2 From the key outcomes those requiring changes to secondary legislation were:

- It was considered that the site allocation representations (also known as alternative site) stage created confusion and did not add value to the LDP process. The regulations abolish the need to consult on the alternative sites following the deposit consultation stage. This stage was devised initially to give examination Inspectors scope to make necessary binding recommendations to add, alter or delete allocations and boundaries without having to carry out any further trawl for sites, and without having to consult further during the examination because full consultation had already occurred during the deposit stage of the LDP process. The reality is that the public/ organisations are consulted when it is considered necessary to alter the plan and this has occurred for each of the adopted local development plans across Wales to date. Therefore, there is no need for the additional consultation on alternative sites prior to authorities submitting the plan for examination.
- It was considered that not being able to amend small issues in the plan without going through a full-blown revision process could lead to wasting resources. These Regulations introduce a short-form revision process for use where it appears to the LPA that the issues involved are not of sufficient significance to warrant the full procedure. This is a more

proportionate procedure for making less significant revisions to an adopted LDP.

- It was also considered necessary to allow for review of part or parts of the plan, prior to a revision taking place.
- It was considered necessary to make it clearer to plan users the period in relation to which an LDP has been prepared. Therefore, the Regulations introduce a requirement that the LDP sub-title indicates the end of the period in relation to which the LDP has been prepared.
- It was considered that making it obligatory to publicise matters by adverts in the local paper was neither always appropriate nor necessary as the relevant community involvement scheme provides the detail of proposed consultation and notification procedures. Therefore, the Regulations will remove this requirement.
- Further amendments were made to the Regulations to assist with clarity and transparency in parts of the procedure. These include setting out how the candidate site process, review report process and the initial consultation report work. The provision made reflects what currently is included in national guidance and what happens in practice.
- Provision is also made for minor, incidental and consequential changes.

4.4 This subordinate legislation will be accompanied with amendments to national guidance.

5. Consultation

5.1. The details of the consultation that took place are included in Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

Consultation

A stakeholder specific consultation on the local development plan refinement work was carried from 1 October 2014 to 2 January 2015. This included the proposed changes to legislation, it explained what intended changes were considered necessary to legislation. The report and analysis of the responses can be viewed at:

<http://llyw.cymru/consultations/planning/local-development-plans-process-review/?status=closed&lang=en>

As the intended effect of this legislation is to change procedures of the local development plan process, the refinement exercise engaged with specific stakeholders and local planning authorities. This exercise benefited from the experience and wealth of knowledge of local planning authorities and other stakeholders who have been involved in the preparation of a significant number of LDPs since October 2005.

To assist in gaining a further understanding of what issues had been raised in the LDP process a desk trawl of ‘issues raised’ was carried out by Welsh Government followed by targeted stakeholder workshop sessions, focusing on areas highlighted through questionnaires and the lessons learnt by key stakeholders involved in plan preparation. The ‘Local Development Plan Process Refinement Exercise: Report’ (‘PRE Report’) was issued in September 2013 and highlights the key outcomes sought from a refined LDP process:

<http://wales.gov.uk/topics/planning/policy/guidanceandleaflets/ldp-process-refinement-report/?lang=en>.

Information from stakeholders involved in the refinement exercise and the consultation responses has been analysed and has informed the content of this Impact Assessment (questions 1,2,3,7 and 8 specifically). In summary, there was overwhelming support to the changes proposed in legislation; however some concerns were raised by a minority in relation to removing the need to place a local advertisement in the press.

The draft revised Planning Policy Wales (PPW) chapter 2 and revised LDP Manual will be issued alongside these amended regulations. The PPW chapter 2 will be included in PPW when the next edition is issued in the Autumn.

Why is Government intervention necessary?

This intervention is necessary to remove certain regulations in relation to stages which are no longer needed and to allow authorities to be able to amend part of a plan under certain circumstances.

All the amendments ensure that local planning authorities are not spending money on stages which are not required or are no longer considered necessary

and therefore a saving will be made on the preparation and subsequent revision of the local development plan.

1. Site Allocation Representations

Options

- Option one – do nothing i.e. the need to advertise alternative sites would remain.
- Option two – remove the need to consult on alternative sites.

Option one – do nothing

Description

There would be no change to the current legislation under this option. The need to carry out regulations 20 and 21 of the current legislation would remain.

Costs

As this option proposes no change, there are no additional costs associated with it.

Benefits

As this option proposes no change, there are no additional benefits associated with it.

Option two – remove the need to consult on alternative sites

Description

This will lead to authorities not having to sieve out alternative sites (which include deletion of sites, changes to proposed boundaries, and adding sites) from the deposit consultation responses at the earliest possible opportunity; create a list of these sites including the addresses/ locations of the sites; plot the sites on maps, advertising the list and invite responses to these sites; respond to all the queries in relation to the alternative site consultation; and then make those representations available for everyone to inspect, and making all this information available on their websites.

Costs

There are no additional costs to Local Planning Authorities, the voluntary sector or the business sector associated with removing the alternative site stages.

Benefits

Local Planning Authorities

The authorities will save financial and staff resources by removing the alternative sites stages. This will lead to plans being adopted earlier. This stage has confused respondents – for example, on occasions respondents have mistaken these sites to be sites that authorities themselves are considering to put forward as part of the adopted plan, rather than sites that have come forward during the deposit stage. It is not considered that anyone

will be disadvantaged by removing this stage as it adds neither value nor purpose to the process. Planning inspectors, if necessary, can accommodate additional sites during the examination, and authorities have done so in the past by consulting on any changes that arose during the examination (matters arising changes – MACs).

It is clear from current practice that authorities have taken different approaches to what constitutes an alternative site, some including very minor changes and some not including the deletion of sites, therefore the costs associated with this stage would vary depending on the number of alternative sites. It is estimated that this stage costs each local planning authority at least £6,500.00. This stage will mean that the following aspects of work would not need to be completed:

- Sieving through the deposit consultation responses collating a list of all the alternative site responses (criteria on alternative sites would depend on the authority);
- Production of maps for the consultation process;
- Prepare, print and publish all the consultation documentation;
- Prepare adverts/ notices;
- Send all alternatives sites out for consultation - which includes, making a copy of the representations available at all locations used previously for past consultations and publish on the LPA's website details of all representations received together with how they can be inspected;
- Reply to all queries relating to the alternative site stage;
- Receive all responses and enter as necessary to any database;
- Consider the responses and make recommendations on how these should be considered (as part of the LDP consultation report).

Voluntary Sector

The benefit for the voluntary sector is that the process will be clearer and an unnecessary consultation stage removed.

Business Sector

Under the current system as sites have come forward late in the LDP process, proposers of these sites have been responsible for the necessary Sustainability Appraisal (SA) work to ensure that the sites may be considered at the examination. The deposit stage now clearly specifies that all sites put forward at deposit need to ensure that the necessary SA work has been carried out. The local planning authority can take sites into account if they come forward early in the process, but proponents need to ensure that late sites has benefited from a SA.

The development industry will benefit from the clarity of removing this stage and will, in time ensure that sites come forward early in the process. From the consultation responses it was evident that some misunderstanding had existed in the development industry about the purpose of this stage, as some considered it to be an additional opportunity to bring forward sites at a late stage in the LDP process – this is not the case.

Preferred Option

Option two – to remove this stage from the LDP process, as it has clearly caused confusion and will lead to a financial saving to all sectors.

2. Clearly illustrated end dates

Options

- Option one – do nothing i.e. development plans not to include the date of expiry of period in relation to which the LDP has been prepared in the sub-title.
- Option two – require local planning authorities to set out the date of expiry of the period in relation to which the LDP has been prepared in the sub-title.

Option one – do nothing

Description

There would be no change to the current legislation under this option. The plan period by reference to which LDPs have been prepared would remain in national guidance and included in the LDP's written statement.

Costs

As this option proposes no change, there are no additional costs associated with it.

Benefits

As this option proposes no change, there are no additional benefits associated with it.

Option two – require local planning authorities to set out the date of expiry of the period in relation to which the LDP has been prepared in the sub-title

Description

To include the date of expiry of period in relation to which the LDP has been prepared in the sub-title of the plan so that the start date and end date are clear.

Costs

Local Planning Authorities

The authorities need to include end of period dates in the sub-titles on any LDPs to be adopted or any revised LDPs. There will be no cost to the authority as it will only apply to plans which are not adopted or to plans which are to be revised. It will not lead to authorities having to reprint existing adopted LDPs.

Voluntary and Business Sectors

There will be no additional costs to the voluntary or business sectors.

Benefits

Local Planning Authorities

This option will mean that the development plan will clearly express the date of the expiry of the period in relation to which the LDP has been prepared in its sub-title rather than somewhere in the text of the LDP written statement, providing clarity and improving transparency.

Voluntary Sector

This option provides clarification on the LDP period for all users.

Business Sector

During the refinement exercise it was expressed that many authorities rely on out of date development plans, and including the end date in the sub-title of the plan would allow users to understand how up to date the current local development plan is, without having to search through the text of the plan.

Preferred Option

Option two is the preferred option because it provides clarity and it has support from many of the stakeholders involved in the refinement work.

3. Local Advertisements

Options

- Option one – do nothing i.e. require the local planning authority to publish local advertisements at every statutory stage.
- Option two –remove the requirement in legislation to advertise the statutory stages in the local press.

Option one – do nothing

Description

There would be no change to the current legislation under this option. Nine advertisements would still be required.

Costs

As this option proposes no change, there are no additional costs associated with it.

Benefits

As this option proposes no change, there are no additional benefits associated with it.

Option two – remove the requirement in legislation to advertise the statutory stages in the local press

Description

To remove the need give notice by public advertisement wherever it occurs throughout the local development plan process. This will not reduce the level of publicity the LPA gives to the LDP, as this will be suitably addressed in the Delivery Agreement through its Community Involvement Scheme; an LPA could

still use this form of notification if it is considered to be appropriate in any particular plan area.

Costs

There are no additional costs for the local planning authority, voluntary sector associated with this proposal. As outlined below, this option is expected to generate cost-savings for the local planning authorities. However, the local press may lose income from the authorities no longer required by legislation to advertise each stage in the newspapers. It is difficult to estimate how much this loss will be, as some authorities may decide to continue to advertise in the local press as a way of communicating with stakeholders.

Benefits

Local Planning Authorities

The total cost of eight adverts over the LDP process for each authority is estimated to be £10,080 (this calculation does not include the requirement to place an advert in the local press once the Welsh Government has made a decision on calling-in a plan (reg. 34(c))). This amount is based on detailed local planning authority costings. There is a need for the authority to place adverts in the local paper at the following stages of the LDP process; delivery agreement, candidate sites, preferred strategy consultation, deposit consultation, alternative sites, submission, examination and adoption.

Voluntary and Business Sectors

There are no additional benefits identified for the voluntary or business sectors.

Preferred Option

Option two is the preferred option as it will allow local planning authorities with some stakeholders to decide on the preferred means of notifying stakeholders and local residents of various consultation stages through its community involvement scheme. This option will not disadvantage the public or any other stakeholder as the authority should ensure there is adequate publicity and notification specified in its community involvement scheme (CIS). The CIS can still specify the use of local advertisements in the press where appropriate.

4. Review report

Options

- Option one – do nothing i.e. review report requirements remain in national guidance
- Option two – publish a review report before an authority can carry out a revision to the plan.

Option one – do nothing

Description

There would be no change to the current legislation under this option.

Costs

As this option proposes no change, there are no additional costs associated with it.

Benefits

As this option proposes no change, there are no additional benefits associated with it.

Option two – publish a review report before an authority can carry out a revision to the plan

Description

The Review Report is required prior to any revisions being made to an adopted LDP.

Costs

Local Planning Authorities

The authority will need to publish the review report in hardcopy and on its website. This is already a requirement in national guidance (LDP Wales (para. 4.46)) and will not lead to additional costs. No additional stages are introduced into the process, only those already contained in current guidance. This will provide clarification for the statutory stages the authority will need to take before revising the LDP.

Voluntary and Business Sectors

No additional costs will be generated as this process is already included in guidance.

Benefits

Local Planning Authorities

By including the review report as a statutory requirement it provides clarification for local planning authorities on the steps required to review and revise the LDP.

Voluntary and business sectors

It will provide clarity to the voluntary and business sectors by including the provision in regulations rather than guidance.

Preferred Option

Option two is the preferred option because it is necessary to include this stage in legislation to allow for a structured revision process.

5. Selective Review

Options

- Option one – do nothing i.e. the whole plan needs to be reviewed
- Option two – enable local planning authorities to carry out a partial review (selective review).

Option one – do nothing

Description

There would be no change to the current legislation under this option. The whole plan would need to be reviewed.

Costs

As this option proposes no change, there are no additional costs associated with it.

Benefits

As this option proposes no change, there are no additional benefits associated with it.

Option two – enable local planning authorities to carry out partial review (selective review)

Description

This amends the procedure to allow for a selective review of the LDP, for example to only review certain policies of the plan rather than the whole plan.

Costs

There will be no additional cost to the local planning authorities, voluntary sector or business sectors from this option as it allows the local planning authority to focus on changes that are needed rather than the whole plan.

Benefits

Local Planning Authorities

The provision will allow authorities to review part of the plan and therefore save on resources.

Voluntary and Business Sectors

It will minimise resources for both sectors as they will be able to consider the changes which are required to ensure the plan is up to date and reflects the updated evidence.

Preferred Option

Option two is the preferred option as it will allow local planning authorities to review only the areas of concern identified in the Review Report (following consideration of the evidence included in the annual monitoring report).

6. Short form procedure for revision of the LDP

Options

- Option one – do nothing i.e. any revision needs to use the full procedure
- Option two – enable local planning authorities to follow a short form procedure where the LPA considers that the issues involved are not of sufficient significance to warrant the full procedure.

Option one – do nothing

Description

There would be no change to the current legislation under this option. The whole plan would need to be revised.

Costs

As this option proposes no change, there are no additional costs associated with it.

Benefits

As this option proposes no change, there are no additional benefits associated with it.

Option two – enable local planning authorities to follow a short form procedure where the LPA considers that the issues involved are not of sufficient significance to warrant the full procedure

Description

This amends the procedure to allow for a short form procedure to revise an LDP in specified circumstances in order to deliver a quicker, shorter and more proportionate process for less significant revisions of an LDP.

CostsLocal Planning Authorities

There will be no additional costs to the authorities. The provision will allow authorities to not formally carry out two separate stages of initial consultation when they are making changes which are not of sufficient significance to warrant the full procedure. Following the preparation of the Review Report, the authority will be able to deposit the plan without having to prepare a preferred strategy document.

Voluntary and Business Sectors

There will be no additional costs for the voluntary or business sectors.

BenefitsLocal Planning Authorities

Currently, any revision has to go through a procedure similar to the preparation of the whole plan, a procedure that is currently taking a minimum of 4 years. The policy intent is for a shortened and more streamlined procedure that enables a swift response in order to make less significant revisions to an LDP based upon robust evidence.

Voluntary Sector

Voluntary sector would benefit as the sector considered it would allow only relevant and specific changes to the plan to be done, and under certain circumstances this could be done quicker and therefore improve certainty by having an up to date plan in place.

Business Sector

The business sector would benefit by plans being kept up to date by ensuring that certain changes could be made swiftly by allowing authorities to change issues which do not go into the heart of the plan in a quicker timeframe.

Preferred Option

Option two is the preferred option as it will allow local planning authorities to follow a quicker procedure which will mean that the authorities would not have to consult twice – it would allow local planning authorities to go to the deposit stage (without having to carry out the preferred strategy stage) in circumstances where the changes are not significant and do not go to the heart of the plan.

7. Candidate site provisions

Options

- Option one – do nothing i.e. not include it as a statutory stage, the requirement would remain in guidance.
- Option two – include a call for candidate site and a candidate site register requirements.

Option one – do nothing

Description

There would be no change to the current legislation under this option. This requirement is currently included in national guidance - all local planning authorities currently carry out a call for candidate sites and produce a register. The LDP Manual advises on a candidate site process and developing a candidate site register during the early stages of developing the evidence base for the LDP.

Costs

As this option proposes no change, there are no additional costs associated with it.

Benefits

As this option proposes no change, there are no additional benefits associated with it.

Option two – include a call for candidate site and a candidate site register requirements

Description

This would make the requirements currently included in guidance a statutory requirement to bring clarity to the process. The purpose of the requirement is to gather information on potential sites for possible inclusion as allocations in the LDP and to make the register of sites publically available at consultation stages and as a submission document. The LDP Manual already advises on a

candidate site process and developing a candidate site register during the early stages of developing the evidence base for the LDP. The guidance will remain.

Costs

There will be no additional costs associated with this option for local authorities, nor voluntary/ business sectors, as it is already a requirement in national guidance.

Benefits

The requirement will provide clarity to local planning authorities, the voluntary and business sectors on the candidate site process.

Preferred Option

Option two is the preferred option by the Welsh Government as it will provide clarity for all users by having a statutory stage for the candidate site process rather than only relying on guidance.

8. Initial Consultation Report

Options

- Option one – do nothing i.e. that the requirement for an initial consultation report remains in guidance.
- Option two – set out in legislation a specification of what the initial consultation report must set out; this would apply both the preparation of a new plan or in revising a LDP.

Option one – do nothing

Description

There would be no change to the current legislation under this option and the requirement would remain in guidance.

Costs

As this option proposes no change, there are no additional costs associated with it.

Benefits

As this option proposes no change, there are no additional benefits associated with it.

Option two – set out in legislation a specification of what the initial consultation report must set out; this would apply both the preparation of a new plan or in revising a LDP

Description

This will provide clarity to ensure that an authority when preparing or revising its LDP prepares an initial consultation report. This is currently a requirement in national guidance and current legislation (regulation 2). Under this option the legislation specifies what the initial consultation report must set out.

Costs

There will be no additional costs associated with this option for local authorities, nor voluntary/ business sectors, as it is already a requirement in national guidance.

Benefits

The requirement will provide local planning authorities, the voluntary and business sectors with clarity on the content of the initial consultation report.

Preferred Option

Option two is the preferred option as it will provide clarity for all users.

Competition Assessment

The proposed amendments to existing legislation does not affect business, charities and/or the voluntary sector, and therefore a competition assessment has not been completed.