

PLANNING (WALES) ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 Development Planning

Section 3 – Preparing and revising the National Development Framework for Wales

14. This section replaces section 60 of the PCPA 2004 (which provided for the Wales Spatial Plan) with sections 60 to 60C.
15. **Section 60** requires the Welsh Ministers to prepare and publish a National Development Framework for Wales. The Framework sets out national policies in relation to the development and use of land in Wales, reflecting Government priorities, and taking account of marine and transport policies published by the Welsh Ministers. The Framework may also set out what may be development of national significance (for developments of national significance, see notes on Part 5, below). The Framework has effect for the period which it specifies.
16. Section 60A requires the Welsh Ministers to prepare a statement of public participation. The Welsh Ministers may review and revise the statement at any time. The statement must set out how and when consultation takes place and how the public will be involved in the preparation of the Framework. As part of this, there must be consultation on a draft of the Framework. The consultation period is 12 weeks from the date of publication of the draft Framework.
17. Section 60B requires the Welsh Ministers to carry out a sustainability appraisal of the draft Framework. The appraisal must include an assessment of the likely effects of the policies in the draft Framework on the use of the Welsh language.
18. Section 60B also requires the Welsh Ministers to lay the draft Framework before the National Assembly for Wales, together with a report summarising representations received during the consultation and explaining how they have been considered. The Assembly has a period for scrutiny of 60 days from the date the draft is laid, disregarding any days the Assembly is dissolved and any periods of recess longer than four days.
19. The Welsh Ministers must have regard to any resolution passed by the Assembly or recommendation made by a committee of the Assembly about the draft Framework during the scrutiny period.
20. After the 60 day scrutiny period the Welsh Ministers may publish the Framework. However, if the Welsh Ministers propose changes to the Framework, they may lay before the Assembly an amended draft and publish that version. The Welsh Ministers must also, when publishing the final form of the Framework, lay before the Assembly a statement explaining how they have taken account of any resolution passed by the Assembly or any recommendation by an Assembly committee made during the scrutiny period.

21. Section 60C requires the Welsh Ministers to keep the Framework under review. The Framework may be revised at any time. If 5 years elapse without a revised Framework having been published or a draft revision having been laid before the Assembly, the Welsh Ministers must publish a statement stating whether they think the Framework should be revised and giving reasons. If the Framework is to be revised, the same procedures for consultation and scrutiny apply as described above.

Section 4 – Designating strategic planning areas and establishing Strategic Planning Panels

22. This section inserts sections 60D to 60G into the PCPA 2004.
23. Section 60D enables the Welsh Ministers to make regulations designating a strategic planning area and establishing a strategic planning panel for that area. A strategic planning area must include all of one local planning authority's area and all or part of at least one other authority's area.
24. Section 60D also introduces Schedule 2A to the PCPA 2004. Schedule 2A makes provision about the membership, administration and financial arrangements of a strategic planning panel. It is inserted into the PCPA 2004 by Schedule 1 to the Act.
25. Before making regulations under section 60D, the Welsh Ministers must have issued a direction under section 60E to one or more local planning authorities, who must have either submitted a proposal for an area to be designated or failed to do so within the specified period. (These requirements do not apply to regulations which amend or revoke previous regulations designating a panel.) The Welsh Ministers must also have undertaken consultation, if required. The circumstances in which consultation is required are set out in section 60F and described below.
26. Section 60E enables the Welsh Ministers to direct one or more local planning authorities to submit a proposal for a strategic planning area. The Welsh Ministers must give their reasons for the direction. The local planning authority or authorities receiving the direction is the "responsible authority". The responsible authority must: prepare a proposal for the designation of a strategic planning area, including a map of the boundary; consult on its proposal; and submit all of the information to the Welsh Ministers within the set period. This set period is six months unless a period is stated in the direction. The period may be extended if agreed by the Welsh Ministers. Following receipt of a proposal, the Welsh Ministers may proceed to make regulations to establish the strategic planning panel and designate the area. If the Welsh Ministers decide not to designate an area, they must give notice of that decision and the reasons for it to the responsible authority and each other authority included in the direction.
27. Section 60F sets out consultation requirements if: the Welsh Ministers do not agree with the proposal submitted by the responsible authority; no proposal has been submitted in the set time period by the responsible authority; or regulations are to be amended or revoked. If the Welsh Ministers wish to designate a different strategic planning area from that proposed by the responsible authority, they must consult those local planning authorities within the area that they wish to designate. If the Welsh Ministers propose to change an existing strategic planning area, the Welsh Ministers must consult the local planning authorities within that area.
28. Section 60G provides that, if the Welsh Ministers request information from local planning authorities that they need to carry out their functions relating to the designation of strategic planning areas, the authorities must provide the information.

Section 5 – Strategic planning areas: survey

29. This section inserts section 60H into the PCPA 2004.
30. Section 60H provides that strategic planning panels must keep under review matters which are expected to affect the development of the strategic planning area. It does this

by applying section 61(2) to (5) of the PCPA 2004 to strategic planning panels. Section 61(2) lists matters which must be kept under review, such as the principal characteristics of an area, purposes for which land is used, population, communications and transport systems. (Section 11 of the Act also amends section 61(2) by updating the matters mentioned in paragraph (a) so that review of the principal characteristics of the strategic planning area must include consideration of the extent to which the Welsh language is used in the area.)

31. In addition to the matters listed in section 61(2), subsection (3) provides that a strategic planning panel must review any changes that might occur in respect of any of the other matters and their effect on the development of the strategic planning area or on the planning of such development. Subsection (4) extends the review of the matters listed in sub-sections (2) and (3) to consideration of those matters in any neighbouring area which might affect the strategic planning area. Subsection (5) imposes a requirement on a panel to consult neighbouring local planning authorities for the purpose of undertaking a review of matters in respect of a neighbouring area.

Section 6– Preparing and revising Strategic Development Plans

32. This section inserts section 60I into the PCPA 2004.
33. Section 60I requires a strategic planning panel to prepare and adopt a strategic development plan. A strategic development plan sets out objectives in relation to the use and development of land and general policies for the implementation of those objectives. The strategic development plan must be in general conformity with the National Development Framework.
34. Regarding the expression “general conformity” which is used in this section, the Court of Appeal considered the meaning of the general conformity requirement between structure and local plans in the case *Persimmon Homes (Thames Valley) Limited v Stevenage Borough Council* [2005] EWCA Civ 1365. Lord Justice Laws held that, in view of the long lead-times over which plans are implemented, a flexible approach should be taken to the phrase “general conformity” to accommodate the various and changing contingencies that could arise. Whether there was general conformity between plans was a matter of planning judgment for the planning authorities (in that case the local planning authority). It is expected that this approach would also apply to conformity between strategic development plans and the National Development Framework.
35. The strategic planning panel are to have regard to certain matters when preparing a strategic development plan. Strategic development plans are to be subject to a sustainability appraisal which must include an assessment of the likely effects of the plan on the use of the Welsh language. The Welsh Ministers may make regulations about the form and content of strategic development plans and the plan period. The strategic development plan has effect as a development plan for the period specified in the plan.
36. Section 60J sets out how relevant sections in Part 6 of the PCPA 2004, which provide for how a local development plan is produced, apply to strategic development plans. Most of those sections apply in the same way that they apply to local development plans, with the result that the overall process for preparing, adopting and revising a strategic development plan is the same. The local development plan preparation process set out in Part 6 of the PCPA 2004 and regulations, involves review and development of an evidence base; preparation and submission of a delivery agreement; preparation of the pre-deposit plan; placing the plan on deposit; submission of the plan for independent examination (to the Planning Inspectorate appointed by the Welsh Ministers); receipt of the Inspector’s report identifying required changes to the deposit plan; and adoption and publication of the plan. A local development plan is also subject to monitoring and review procedures.

37. The Welsh Ministers have power by virtue of section 60J to intervene through a direction or by calling the plan in for their approval.

Section 7 – Conformity of certain plans and schemes with National Development Framework and Strategic Development Plan

38. This section amends section 62 of the PCPA 2004. It requires a local development plan to be in general conformity with the National Development Framework and any strategic development plan for the local planning authority's area (see paragraph 34 above for comment on the term "general conformity").
39. This section also amends section 83 of the TCPA 1990 in relation to simplified planning zone schemes made by local planning authorities. (Under section 82 of the TCPA 1990, a simplified planning zone is an area in which a simplified planning zone scheme is in force. Planning permission is granted in any part of the zone for development specified in the scheme or for development of any class specified in regulations.) The amendment to section 83 requires a simplified planning zone scheme in Wales to be in general conformity with the National Development Framework and any relevant strategic development plan.

Section 8 – Duty to consider whether to review Local Development Plan

40. This section inserts section 68A into the PCPA 2004. It provides that following publication or revision of the National Development Framework or the adoption or approval of a strategic development plan, a local planning authority must consider whether to review its local development plan.
41. This section makes a consequential amendment to section 69 of the PCPA 2004. (Section 69 deals with reviews of local development plans.)

Section 9 – National Development Framework and Strategic Development Plan to form part of development plan

42. This section amends section 38(4) of the PCPA 2004 so that the development plan for any area of Wales consists of the National Development Framework, the strategic development plan and the local development plan.
43. Section 70 of the TCPA 1990 states that when dealing with an application for planning permission, a local planning authority must have regard to the development plan and other material considerations. Section 38(6) of the PCPA 2004 requires that where regard is to be had to a development plan, applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The effect of the amendment made by section 9 is that local planning authorities must have regard to all three plans when making planning decisions. If there is a conflict between the three development plans, section 38(5) of the Act 2004 provides that the conflict is resolved in favour of the most recent plan.

Section 10 – Land affected by National Development Framework or Strategic Development Plan

44. Property values often slump when land is affected by a proposed public work such as a new motorway or railway; this is known as planning "blight". Part 6 and Schedule 13 of the TCPA 1990 deal with blighted land and provide that in certain circumstances landowners affected can require local authorities to buy their land.
45. Section 149 in Part 6 of the TCPA 1990 introduces Schedule 13, which sets out what may be treated as blighted land (not all land affected by proposed development will be "blighted land"). Other provisions in Part 6 set out the procedure for an owner of blighted land to require a local authority to acquire the owner's interest in the land.

46. Under section 150 in Part 6, the owner of land considered blighted by the proposals of a public authority may, if certain conditions are fulfilled, serve notice on the authority requiring the authority to purchase the owner's interest in the land. The price for the land is its market value ignoring the effects of the development causing the blight.
47. Consequential amendments are made in this section to Part 6 of and Schedule 13 to the TCPA 1990 as a result of the introduction of the National Development Framework and strategic development plans. References to the National Development Framework and strategic development plan are inserted into Schedule 13. This section also confers compulsory purchase powers on the Welsh Ministers where a blight notice has been served in respect of land identified for certain purposes in the National Development Framework. The effect is that owners of land blighted by proposals in the Framework or in a strategic development plan are treated the same way as those affected by other planning proposals.

Section 11 – Welsh language

48. **Section 11** amends sections 61 and 62 of the PCPA 2004.
49. The effect of the amendment to section 61 is that the matters affecting the development of the area that must be kept under review now include the use of the Welsh language. This applies to local planning authorities and (by virtue of section 5 of the Act) to strategic planning panels.
50. The amendment to section 62 requires a sustainability appraisal of the local development plan to include an assessment of the likely effects of the plan on the use of the Welsh language.

Section 12 – Period for which Local Development Plan has effect

51. This section amends section 62 of the PCPA 2004. It requires a period to be stated in a local development plan during which the plan has effect and after which it ceases to be a development plan. The Welsh Ministers have power to make regulations about plan periods.

Section 13 – Withdrawal of Local Development Plan

52. This section replaces section 66 of the PCPA 2004 with new sections 66 and 66A.
53. The effect of the new section 66 is that the Welsh Ministers have power to direct a local planning authority to withdraw its local development plan at any time before the plan is adopted. The Welsh Ministers must give reasons for the direction.
54. The new section 66A of the PCPA 2004 sets out how a local development plan can be withdrawn if there is no direction from the Welsh Ministers. Section 66A(3)(a) provides that where the Welsh Ministers have directed a local planning authority to submit the local development plan to them for approval in accordance with section 65(4) (which may be at any time before a local development plan is adopted) a local planning authority may not withdraw the plan.
55. Similarly, a local development plan may not be withdrawn by a local planning authority if the Welsh Ministers have taken any step relating to the plan under section 71 (Welsh Ministers' intervention powers). Section 71 applies if the Welsh Ministers think that a local planning authority are failing or omitting to do anything which is necessary in connection with the preparation, revision or adoption of a local development plan. The steps that may be taken by the Welsh Ministers in accordance with section 71 include holding an independent examination (in relation to which section 64(4) to (7) apply), preparing, revising and approving a local development plan (see subsection (3)(b)).

56. After a local development plan has been submitted for independent examination, it can be withdrawn only on the recommendation of the examiner and if the Welsh Ministers have not overruled this recommendation (see subsection (4)).
57. A local planning authority may withdraw a plan which has reached a stage specified in regulations (e.g. publication of pre deposit proposals or deposit plan or another stage in the development of the plan) and which has not yet been submitted for examination, only if the local planning authority have given notice of their intention to withdraw their plan to the Welsh Ministers and the notice period relating to notification to withdraw has expired (see subsections (5) and (6)). The notice period for withdrawal is specified in regulations, see subsection (9).
58. On receipt of notification by the Welsh Ministers of a local planning authority's intention to withdraw a plan, the Welsh Ministers may direct the authority to provide further information and/or may extend the notice period (see sub-section (7)).
59. Provision may be included in regulations made by the Welsh Ministers about the giving of notice of intention to withdraw a local development plan (see subsection (8)).

Section 14 – Welsh Ministers' power to direct preparation of joint Local Development Plan

60. This section amends section 72 of the PCPA 2004, which allows local planning authorities to prepare a joint local development plan. The effect of the amendment is to give the Welsh Ministers a new power to direct two or more local planning authorities to prepare a joint local development plan and to require the Welsh Ministers to state their reasons for doing so. This power does not extend to National Park authorities.
61. The authorities receiving a direction must act jointly in exercising their functions relating to local development plans (including the functions of preparing, adopting and revising a local development plan). There are other provisions which deal with the situation where a direction is withdrawn in relation to one or all of the authorities (by applying existing provisions about what happens if an authority withdraws from an agreement to prepare a joint local development plan).

Section 15 – Joint planning boards: functions relating to surveys and Local Development Plans

62. The Welsh Ministers currently have power under section 2(1B) of the TCPA 1990 to establish a joint planning board as the local planning authority for a united district comprising two or more areas each of which is the whole or part of a Welsh county or county borough.
63. **Section 15** amends the definition of “local planning authority” in section 78 of the PCPA 2004 to include a joint planning board. The effect of the amendment is to enable a joint planning board to prepare a local development plan and act as a charging authority for the purposes of the community infrastructure levy for its district. (For the community infrastructure levy, see Part 11 of the Planning Act 2008.)
64. This section also amends section 62 of the PCPA 2004 to require a joint planning board to have regard to the local well-being plan(s) for its area when preparing a local development plan. (For local well-being plans, see section 39 of the Well-being of Future Generations (Wales) Act 2015.)
65. **Section 41** of the Act enables the Welsh Ministers to make changes to the power to establish joint planning boards, see paragraphs 161 to 163 below.

Section 16 – Development planning: further amendments

66. This section introduces Schedule 2. Schedule 2 contains consequential amendments to various Acts.