

Changes to legislation: There are currently no known outstanding effects for the Local Government (Wales) Act 1994, Part III. (See end of Document for details)

SCHEDULES

SCHEDULE 5

UNITARY DEVELOPMENT PLANS IN WALES

PART III

TRANSITIONAL PROVISIONS

Modifications etc. (not altering text)

- C1** Sch. 5 Pt. III applied (1.4.1996) (*temp.*) by 1990 c. 8, s. 28A(1)(b) (as inserted (1.4.1996) by 1994 c. 19, s. 20(2) (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/3198, art. 4, Sch. 2)
Sch. 5 Pt. III: transfer of functions (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

Introductory

- 9 (1) The provisions of this Part of this Schedule apply in relation to the area of any local planning authority in Wales during the period—
- (a) beginning on 1st April 1996, and
 - (b) ending when a unitary development plan has become fully operative for that area.
- (2) For the purposes of sub-paragraph (1), a unitary development plan for the area of a local planning authority in Wales has become fully operative—
- (a) when it has become operative under Chapter I of Part II of the planning Act; or
 - (b) where different parts of it have become operative at different times, when all parts of it have become so operative.
- (3) Sub-paragraphs (4) and (5) apply where the area of a local planning authority in Wales includes—
- (a) the whole or any part of an area prescribed under section 23B(2) of the planning Act in relation to a National Park, and
 - (b) other land.
- (4) The provisions of this Part of this Schedule apply separately in relation to—
- (a) the Park area or, if there is more than one, each Park area, and
 - (b) the remaining area.
- (5) Any reference in this Part of this Schedule to the area of the local planning authority (including any reference which falls to be so construed) shall be construed—
- (a) in its application in relation to any Park area, as a reference to that Park area, and
 - (b) in its application in relation to the remaining area, as a reference to that area.

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(6) In this paragraph—

“the Park area”, in relation to a National Park, means the part of the local planning authority’s area which is within the area prescribed under section 23B(2) of the planning Act in relation to that Park or, where there is more than one such part, those parts taken as a whole;

“the remaining area” means the part of the local planning authority’s area which is not within an area so prescribed in relation to any National Park.

Application in relation to National Parks

^{F1}10

Textual Amendments

F1 Sch. 5 Pt. III para. 10 repealed (1.4.1997) by 1995 c. 25, s. 120, Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, Sch.

Interpretation

11 (1) In this Part of this Schedule—

“affected area”, in relation to a new planning authority, means—

- (a) in the case of a required plan (or proposed required plan) or a structure plan, the plan area, and
- (b) in the case of alteration proposals or structure plan alteration proposals, the related area,

to the extent that, on 1st April 1996, it became comprised in the area of the new planning authority;

“alteration proposals” means proposals for the alteration or replacement of a required plan (or of a plan which is treated as such a plan by virtue of paragraph 44(2) of Schedule 4 to the ^{M1}Planning and Compensation Act 1991)—

- (a) previously permitted to be prepared under section 39(1) of the planning Act; or
- (b) previously required to be prepared by a direction of the Secretary of State under section 39(2) of that Act;

“modified plan”, in relation to a required plan (or proposed required plan) and any area, means that plan to the extent that it relates or is to relate to the area;

“modified proposals”, in relation to alteration proposals and any area, means those proposals to the extent that they relate or are to relate to the area;

“modified structure plan proposals”, in relation to structure plan alteration proposals and any area, means those proposals to the extent that they relate or are to relate to the area;

“new planning authority” means a new principal council or a joint planning board who are the local planning authority for any area in Wales;

“old development plan” has the meaning given by paragraph 14(1)(b);

“plan area”, in relation to a required plan (or proposed required plan) or structure plan, means the area to which the plan relates (or is to relate);

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“previously” means immediately before 1st April 1996;

“related area”, in relation to alteration proposals or structure plan alteration proposals, means, to the extent that the proposals relate or are to relate to it, the plan area of the relevant required plan or, as the case may be, structure plan;

“relevant authority” means a new planning authority in whose area any part of—

- (a) in the case of a proposed required plan, the plan area; or
- (b) in the case of alteration proposals or structure plan alteration proposals, the related area,

became comprised on 1st April 1996;

“required plan” means—

- (a) a local plan which previously had been prepared or was required to be prepared under section 36(1) of the planning Act;
- (b) a minerals local plan which previously had been prepared or was required to be prepared under section 37(1) or (3) of that Act; or
- (c) a waste local plan which previously had been prepared or was required to be prepared under section 38(2) or (4) of that Act;

and for this purpose a plan which was permitted to be prepared jointly is not to be treated on that ground alone as not being required to be prepared;

“saved local plan” has the meaning given by paragraph 14(1)(a);

“structure plan” means a structure plan previously in force under section 31 of the planning Act; and

“structure plan alteration proposals” means proposals for the alteration or replacement of a structure plan—

- (a) previously permitted to be prepared under section 32(1) of the planning Act; or
- (b) previously required to be prepared by a direction of the Secretary of State under section 32(2) of that Act.

(2) For the purposes of this Part of this Schedule—

- (a) even if the part of a required plan that relates to a part of the plan area has been prepared, the plan is to be treated as being in course of preparation in relation to that part of the area if the plan as a whole is in course of preparation; and
- (b) even if the part of alteration proposals or structure plan alteration proposals that relates to a part of their related area has been prepared, those proposals are to be treated as being in course of preparation in relation to that part of the area if the proposals as a whole are in course of preparation.

Marginal Citations

M1 1991 c. 34.

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Preparation of modified schemes

- 12 (1) Where any planning scheme was previously in course of preparation, any relevant authority may submit to the Secretary of State a request for approval to prepare a modified scheme for the affected area.
- (2) The Secretary of State may approve any such request if he is satisfied that the planning scheme was previously in course of preparation in relation to the affected area, and that—
- (a) it is expedient that preparation of the planning scheme be continued in the preparation of the modified scheme;
 - (b) continued preparation of the planning scheme in relation to the affected area is likely to be of assistance to the new planning authority in preparing the unitary development plan for their area; or
 - (c) the adoption or approval of a modified scheme is otherwise expedient or desirable.
- (3) Any approval under sub-paragraph (2)—
- (a) may be given subject to such conditions as the Secretary of State thinks fit, including conditions as to the period within which the modified scheme is to be prepared and a copy of it submitted to him;
 - (b) may be accompanied by a direction modifying in such manner, and for such period, as the Secretary of State thinks fit the duty of the new planning authority to prepare a unitary development plan under Chapter I of Part II of the planning Act.
- (4) Where the Secretary of State gives a direction under sub-paragraph (3)(b), Chapter I of Part II of the planning Act shall have effect in relation to the new planning authority subject to that direction.
- (5) Where a planning scheme for any area in Wales had previously been prepared but not adopted or approved under Chapter II of Part II of the planning Act, the Secretary of State may, on an application made to him by a relevant authority, give permission to prepare a modified scheme for the affected area.
- (6) The Secretary of State shall, whenever he gives any approval under sub-paragraph (2) or permission under sub-paragraph (5), direct that such of—
- (a) the provisions of Chapter II of Part II of the planning Act, and
 - (b) any regulations made under any provision of that Chapter,
- as may be specified in the direction shall apply for the purpose of the preparation, adoption or approval of the modified scheme in relation to the affected area.
- (7) The provisions applied by a direction under sub-paragraph (6)—
- (a) may include any requirement with respect to a modified scheme (or its preparation) corresponding to one already satisfied with respect to the planning scheme;
 - (b) may be applied subject to such modifications as may be specified in the direction; and
 - (c) may be applied for such limited period (if any) as may be specified in the direction.
- (8) For the purposes of this paragraph—
- “planning scheme” means a required plan, alteration proposals or structure plan alteration proposals; and

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- “modified scheme”, in relation to a planning scheme—
- (a) which is a required plan, means a modified plan,
 - (b) which consists of alteration proposals, means modified proposals,
 - (c) which consists of structure plan alteration proposals, means modified structure plan proposals.

Default powers

- 13 (1) This paragraph applies where—
- (a) a new planning authority have been given approval or permission under paragraph 12(2) or (5);
 - (b) the Secretary of State has required that proposals for a modified plan or modified proposals or modified structure plan proposals be submitted to him; or
 - (c) a new planning authority have prepared, but have not adopted, a modified plan, modified proposals or modified structure plan proposals.
- (2) Where this paragraph applies—
- (a) if at any time the Secretary of State is satisfied, after holding a local inquiry or other hearing, that the new planning authority are not taking the steps necessary to enable them to submit or adopt the proposals for a modified plan or the modified proposals or modified structure plan proposals within a reasonable period, or
 - (b) in a case where a condition was imposed in the approval given under paragraph 12(2) for the submission of a copy of the plan or proposals within a specified period, if that copy has not been submitted within that period,
- the Secretary of State may take such steps, which may include the alteration of any plan, as he thinks fit.
- (3) The provisions of Chapter II of Part II of the planning Act shall, so far as applicable, apply with any necessary modifications in relation to the doing of anything under this paragraph by the Secretary of State and the thing so done.
- (4) The new planning authority shall on demand repay to the Secretary of State so much of any expenses incurred by him in connection with the doing of anything which should have been done by them as he certifies to have been incurred by him in the performance of their functions.

Effect of adoption or approval of modified plan

- 14 (1) Upon the adoption or approval of a modified plan for which the related required plan was previously the only required plan or the last of the required plans for the affected area—
- (a) any local plan which was continued in operation in relation to that area by paragraph 44(1) of Schedule 4 to the ^{M2}Planning and Compensation Act 1991 (a “saved local plan”), and
 - (b) any plan which was previously in force by virtue of Schedule 7 to the ^{M3}Town and Country Planning Act 1971 and Part III of Schedule 2 to the planning Act (an “old development plan”),
- shall cease to have effect in relation to that area.

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- (2) If the Secretary of State so directs, any specified provisions of a saved local plan or of an old development plan shall continue in operation—
 - (a) for such period as may be specified or determined in accordance with the direction;
 - (b) in relation to the affected area or any specified part of the affected area to which the saved local plan or the old development plan relates.
- (3) The Secretary of State may at any time revoke any direction given under sub-paragraph (2).
- (4) Before giving or revoking any such direction the Secretary of State shall consult the new planning authority.
- (5) Any provision of a saved local plan or old development plan in force for any area in Wales by virtue of a direction under this paragraph shall have effect subject to the provisions of any modified plan in force for that area.
- (6) For the purposes of this paragraph, “specified” means specified in the direction given under sub-paragraph (2).

Marginal Citations

- M2** 1991 c. 34.
M3 1971 c. 78.

Other plans to prevail over old development plans and saved local plans

- 15 (1) Where an old development plan is in force for any area in Wales, the provisions of—
 - (a) any structure plan,
 - (b) any part of the unitary development plan, or
 - (c) any local plan,in force in respect of that area shall, to the extent that they conflict with it, prevail over any provision of the old development plan for the purposes of Parts III, V, VI, VII, VIII and IX of the planning Act, the ^{M4}Planning (Listed Buildings and Conservation Areas) Act 1990 and the ^{M5}Planning (Hazardous Substances) Act 1990.
- (2) Where a saved local plan is in force in respect of any area in Wales, the provisions of—
 - (a) any local plan, minerals local plan, or waste local plan,
 - (b) any part of a unitary development plan,in force in that area shall, to the extent that they conflict with it, prevail for all purposes over any provision of the saved local plan.

Marginal Citations

- M4** 1990 c. 9.
M5 1990 c. 10.

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Local plans to prevail over structure plans

- 16 (1) The provisions of a local plan in force by virtue of paragraph 1 of Part IA of Schedule 2 to the planning Act (continuation of structure, local and old development plans) for any area in Wales prevail for all purposes over any conflicting provisions in the structure plan so in force for that area unless the local plan is one which—
- (a) before 1st April 1996 had been stated under section 35C of the planning Act not to be in general conformity with the structure plan; and
 - (b) has been neither altered nor replaced after the statement was supplied.
- (2) Where, in relation to a modified plan in force for any area in Wales, the required plan was a local plan, the provisions of that modified plan prevail for all purposes over any conflicting provisions in the structure plan in force for that area.

Development plans for compensation purposes

- 17 (1) This paragraph applies where, in relation to any area in Wales, there is no local plan in force.
- (2) For any of the purposes of the ^{M6}Land Compensation Act 1961, the development plan or current development plan shall as respects that area be taken as being—
- (a) if any part of the unitary development plan is in force for that area, that part of that plan; or
 - (b) if no part of such a plan is in force for that area, whichever of the structure plan and the old development plan (if any) in force for that area gives rise to those assumptions as to the grant of planning permission which are more favourable to the owner of the land in question.
- (3) For any of the purposes of the Act of 1961, land situated in an area defined in the current development plan as an area of comprehensive development (“the defined area”) shall be taken to be situated in whichever of the following areas leads to such assumptions as are mentioned in sub-paragraph (2)(b)—
- (a) any area which is wholly or partly within the defined area and is selected by the structure plan as an action area; and
 - (b) the area so defined in the old development plan.

Marginal Citations

M6 1961 c. 33.

Revocation of old development plan

- 18 The Secretary of State may, after consultation with a new planning authority, by order wholly or partly revoke an old development plan continued in force under paragraph 1 of Part IA of Schedule 2 to the planning Act in respect of the whole or any part of so much of the area to which it relates as is comprised in the area of the new planning authority.

Temporary duty in relation to existing structure plan

- 19 It is the duty of a local planning authority in Wales, when exercising their functions under section 70 of the planning Act (determination of applications for planning

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permission) in relation to an application for planning permission, to seek the achievement of the general objective of the structure plan (if any) for the time being in force in their area (or, where different structure plans apply in respect of different parts of their area, in that part of their area to which the application relates).

Unitary development plan to prevail over other plans

20 Where a unitary development plan is operative in part, but has not become fully operative, in the area of a new planning authority, to the extent that they conflict with any provision of any—

- (a) structure plan,
- (b) local plan,
- (c) minerals local plan,
- (d) waste local plan, or
- (e) modified plan,

in force for that area or any part of it, the provisions of the unitary development plan shall prevail for the purposes of Parts III, V, VI, VII, VIII and IX of the planning Act and of the ^{M7}Planning (Listed Buildings and Conservation Areas) Act 1990 and the ^{M8}Planning (Hazardous Substances) Act 1990.

Marginal Citations

M7 1990 c. 9.

M8 1990 c. 10.

Planning blight: structure plans

- 21 (1) Paragraph 1 of Schedule 13 to the planning Act (blighted land) shall apply with the omission of Notes (2), (5A) and (7) and as modified by sub-paragraphs (2) to (6).
- (2) References to a structure plan in force for the district in which land is situated are to be read as if they were references to a structure plan in force where that land is situated by virtue of Part IA of Schedule 2 to the planning Act.
- (3) Note (1) to that paragraph shall apply as if—
- (a) in paragraph (a), after “inspection” there were inserted “ before 1st April 1996 ” and at the end there were added “ and not withdrawn before that date ”;
 - (b) after that paragraph there were inserted—
 - “(aa) modified structure plan proposals made available for inspection under that section as it is applied by virtue of Part III of Schedule 5 to the Local Government (Wales) Act 1994;”;
 - (c) in paragraph (b), after “published” there were inserted “ either before 1st April 1996 ” and at the end there were added “ or after that date in accordance with regulations or a direction made by virtue of that Part of that Schedule ”.
- (4) Note (3) to that paragraph shall apply as if, after paragraph (b), there were inserted—

“or

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- (c) copies of the unitary development plan for the area in which the land is situated have been made available under section 13(2).”.
- (5) Note (4) to that paragraph shall apply as if at the end there were added “ or paragraph 13 of Schedule 5 to the Local Government (Wales) Act 1994 ”.
- (6) In Note (5) to that paragraph—
 - (a) the reference to a local plan is to be read as if it were a reference to—
 - (i) a local plan within the meaning of paragraph 4 of Part IA of Schedule 2 to the planning Act; or
 - (ii) a modified plan in force where that land is situated; and
 - (b) any reference to a district for which a local plan is in operation is to be read as if it were a reference to the area in which the plan mentioned in paragraph (a) (i) or (ii) is in force by virtue of Part IA of Schedule 2 to the planning Act.

Planning blight: local plans and modified plans

- 22 (1) Paragraph 2 of Schedule 13 to the planning Act (blighted land) shall apply as modified by sub-paragraphs (2) to (5).
- (2) Paragraph (a) shall apply as if for “for the district” there were substituted “ where the land is situated ”.
- (3) Note (1) to that paragraph shall apply as if—
 - (a) for the words from “includes a reference” to “also” there were substituted “ is a reference to a local plan within the meaning of paragraph 4 of Part IA of Schedule 2 or a modified plan within the meaning of Part III of Schedule 5 to the Local Government (Wales) Act 1994, and, until copies of the unitary development plan for the area in which the land is situated have been made available under section 13(2), ”;
 - (b) in paragraph (a), after “proposals have” there were inserted “ before 1st April 1996 ”, and after “1991” there were inserted “ and not withdrawn before that date ”; and
 - (c) in paragraph (b)—
 - (i) after “published” there were inserted “ either before 1st April 1996 ”, and
 - (ii) at the end of that paragraph there were added “ or after that date in accordance with regulations or a direction made by virtue of Part III of Schedule 5 to the Local Government (Wales) Act 1994 ”.
- (4) Note (3) to that paragraph shall apply as if, in paragraph (b), the words “the local planning authority decide to abandon” were omitted.
- (5) Note (4) to that paragraph shall apply as if, at the end, there were added “or paragraph 13 of Schedule 5 to the Local Government (Wales) Act 1994”.

Regulations and directions

- 23 (1) The Secretary of State may by regulations make provision corresponding to any provision which he could previously have made by regulations under any provision of Chapter II of Part II of the planning Act.
- (2) The Secretary of State may by regulations provide for—

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- (a) any regulations made or directions given under any provision of that Chapter and previously in force to continue to apply for such period as may be prescribed; and
 - (b) any regulations made under sub-paragraph (1) or applied under paragraph (a) or by or under any other provision of this Schedule to apply in relation to—
 - (i) modified plans, modified proposals or, as the case may be, modified structure plan proposals, or
 - (ii) the preparation of any such plan or proposals,subject to such modifications (if any) as may be prescribed.
- (3) The Secretary of State may by a direction given under this paragraph make provision corresponding to any provision which he could previously have made by a direction given under any provision of Chapter II of Part II of the planning Act.
- (4) Any power exercisable by virtue of sub-paragraph (1) or (3) to make regulations or give a direction in relation to required plans, proposals for the alteration or replacement of a required plan or structure plan, or the preparation of any such plan or proposals, shall be exercisable, with the necessary modifications, in relation to—
- (a) modified plans, modified proposals or, as the case may be, modified structure plan proposals, or
 - (b) the preparation of any such plan or proposals.

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