

# PLANNING (WALES) ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5 Applications to the Welsh Ministers**

##### ***Section 19 – Developments of national significance: applications for planning permission***

76. This section inserts sections 62D and 62E into the TCPA 1990.
77. Section 62D requires that planning applications for development of national significance (“DNS”) are made to the Welsh Ministers. A DNS application is an application for planning permission (other than outline planning permission) for the development of land in Wales, where the proposed development is of national significance. (Outline planning permission is permission which is granted subject to detailed matters being reserved for subsequent approval.)
78. The Welsh Ministers may give “national significance” to a development in two ways.
79. Firstly, the Welsh Ministers may set out criteria for DNS in regulations. A development in Wales will be of national significance if it meets those criteria. Regulations could, for example, give national significance to onshore generating stations of a certain capacity, or airport and rail related development of a certain scale.
80. Secondly, a development in Wales will be of national significance if it is described as such in the National Development Framework.
81. An application for planning permission to vary conditions attached to a previous planning permission (whether for DNS or other development) is not to be treated as an application for DNS unless the application is of a description prescribed in regulations by the Welsh Ministers.
82. A person who proposes to make a DNS application must notify the Welsh Ministers and the local planning authority to which the application would otherwise have been made. The Welsh Ministers may make provision, in a development order, as to the form and content of notification, information that is to accompany the notification, and the way and time in which the notification is to be given.
83. This section also requires that the Welsh Ministers must give notice to the person proposing the application that the notification has been accepted. The Welsh Ministers may make provision in regulations about the giving of such notice. This may include provision about the form and content of the notice and the way in which and the period within which it is given. Any step taken in respect of an application before such notice has been given does not constitute consultation about the application, which means that the Welsh Ministers must be notified of proposed applications before consultation takes place. A requirement to consult could arise where DNS applications have been prescribed in a development order for the purposes of section 61Z (inserted by section 17).

***Section 20 – Developments of national significance: secondary consents***

84. This section inserts sections 62F, 62G and 62H into the TCPA 1990.
85. Section 62F allows the Welsh Ministers to make decisions on consents which they consider to be connected to an application for DNS, in place of the normal consenting authority. A decision of the Welsh Ministers on a secondary consent is final, which means that there is no right of appeal to the Welsh Ministers.
86. Section 62G gives power to the Welsh Ministers to give directions to the normal consenting authority to do things in relation to a secondary consent. The Welsh Ministers may make regulations about how a secondary consent is dealt with by the Welsh Ministers, including consultation arrangements. Regulations may provide for other enactments or requirements in respect of secondary consents either to apply with changes or not to apply where decisions are to be made by the Welsh Ministers. There may for example be a need to modify a timetable applicable to a secondary consent to fit with the timetable for determining a DNS application.
87. Section 62H defines a secondary consent and when it is connected to an application for DNS. A secondary consent is a consent which is required in order for the proposed development to be undertaken. The section gives the Welsh Ministers power to prescribe secondary consents in regulations. Secondary consents could include:
- a) outline or full planning permission for development associated with the DNS development, such as access roads, office accommodation or visitor centres;
  - b) reserved matters approval for associated development;
  - c) listed building consent under the Planning (Listed Buildings and Conservation Areas) Act 1990;
  - d) scheduled monument consent under section 2 of the Ancient Monuments and Archaeological Areas Act 1979;
  - e) the exchange of common land under sections 16 and 17 of the Commons Act 2006; and
  - f) consent for works on common land under sections 38 and 39 of the Commons Act 2006.

***Section 21 – Developments of national significance: local impact reports***

88. This section inserts sections 62I, 62J and 62K into the TCPA 1990 and makes provision for local impact reports. A local impact report describes the impact of a proposed development on the area (see section 62K and paragraph 92 below).
89. Section 62I makes provision about the submission of a local impact report in relation to DNS applications under section 62D. The Welsh Ministers must give notice to each relevant local planning authority, requiring a local impact report in respect of an application for DNS. An authority to which notice is given must submit a report. A local planning authority is a ‘relevant local planning authority’ if all or part of the land to which the application relates is in the authority’s area.
90. Section 62J places a duty on the Welsh Ministers to have regard to the contents of any local impact report submitted to them by a relevant local planning authority.
91. Any other local planning authority and any community council may submit a voluntary local impact report in relation to an application for DNS. The Welsh Ministers must have regard to any such report in dealing with an application. The Welsh Ministers may make provision in a development order about the submission of voluntary local impact reports. For example, provision could be made to the manner in which a voluntary local

impact report is to be submitted to the Welsh Ministers, or about the timescales within such report is to be submitted.

92. Section 62K provides that a local impact report is a report in writing that gives details of the likely impact of the proposed development on the area of the authority or community council and complies with any requirements set out in a development order. For example, provision could be made specifying the form and content of such a report, such as information to be provided to the Welsh Ministers in relation to the land in question.

### ***Section 22 – Timetable for determining applications***

93. This section inserts section 62L into the TCPA 1990.
94. Section 62L places the Welsh Ministers under a duty to determine an application for DNS, and make any decision about a secondary consent that is connected to it, before the end of the “determination period”. This is the period of 36 weeks starting on the date the application is accepted by the Welsh Ministers. The Welsh Ministers must report annually to the National Assembly for Wales on their compliance with this requirement.
95. The Welsh Ministers may by order, substitute a different period as the determination period. They may, also by development order, provide what constitutes “acceptance” of an application. Such an order could, for example, provide that acceptance of an application is contingent on the Welsh Ministers confirming that they are satisfied that an application complies with all prescribed requirements.
96. The section also enables the Welsh Ministers, by notice, to suspend the determination period in any particular case, and to terminate, reduce or extend a period of suspension. Any such notice must be issued to the applicant, the local planning authority to which the application would have otherwise been made and any representative persons that the Welsh Ministers consider appropriate. A development order may provide how and when such a notice is given. The Welsh Ministers must report annually to the National Assembly for Wales on their exercise of these functions.
97. [Sections 24 to 27](#) of the Act make further provision about the procedure for determining DNS applications. The effect of these sections is described below.

### ***Section 23 – Option to make application to Welsh Ministers***

98. This section inserts sections 62M, 62N and 62O into the TCPA 1990.
99. Section 62M enables applications for planning permission and applications for reserved matters approval to be made directly to the Welsh Ministers, where the local planning authority to whom the applications would otherwise have been made have been designated by the Welsh Ministers. The applicant will be able to choose whether to apply to the local planning authority or the Welsh Ministers.
100. The Welsh Ministers may prescribe in regulations the types of development to which the right to make such an application applies. It is likely that major development will be prescribed. “Major development” is defined in the [Town and Country Planning \(Development Management Procedure\) \(Wales\) Order 2012, S.I. 2012 No 801 \(W. 110\)](#), see Article 2(1). In brief, major development is (a) mining operations (b) the use of land for mineral-working deposits; (c) housing development of 10 houses or more or on a site of 0.5 hectares or more; (d) buildings with a floor space of 1000 square metres or more; (e) development on land of 1 hectare or more
101. The Welsh Ministers must publish the criteria for designating a local planning authority and for revoking a designation. Such criteria could, for example, focus on the speed within which certain applications are determined by local planning authorities, and/or the frequency with which such determinations are overturned on appeal.

*These notes refer to the Planning (Wales) Act 2015  
(c.4) which received Royal Assent on 6 July 2015*

102. Section 62N sets out the conditions the criteria must meet before they can be applied by the Welsh Ministers. The conditions require consultation by the Welsh Ministers with each local planning authority in Wales, the Assembly not voting against the criteria, and publication.
103. The Welsh Ministers must give notice of the designation or revocation in writing to the local planning authority concerned. The Welsh Ministers must publish a copy of such notice.
104. Urban development corporations may not be designated. (For urban development corporations see Part 16 of the Local Government, Planning and Land Act 1980.)
105. Section 62O applies where an application is made to the Welsh Ministers under section 62M. Where a connected application would otherwise have been made to the local planning authority or hazardous substances authority, this section enables the application to be made directly to the Welsh Ministers. An application is a “connected application” if it:
  - a) is made under the Planning Acts (for these purposes the TCPA 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990),
  - b) relates to land in Wales;
  - c) is described for this purpose in regulations made by the Welsh Ministers; and
  - d) is connected with the principal application.
106. Where the Welsh Ministers consider an application is either not connected with the principal application, or is connected but should not be determined by them, the Welsh Ministers must refer the application to the authority to which it would normally have been made. The application is then determined by that authority.

***Section 24 – Further provision about applications made to Welsh Ministers***

107. This section inserts sections 62P and 62Q into the TCPA 1990.
108. Section 62P states that a decision of the Welsh Ministers on an application made to them under sections 62D, 62M and 62O is final (resulting in no right of appeal to the Welsh Ministers). However, as a result of amendments made to Part 12 of the TCPA 1990 by Schedule 4, the validity of such decisions may in certain circumstances be questioned on an application to the High Court.
109. The Welsh Ministers may direct a local planning authority or hazardous substances authority to do things in relation to an application made under those sections.
110. Section 62Q imposes a duty on the Welsh Ministers to notify a community council of applications made to the Welsh Ministers under sections 62D, 62F, 62M or 62O where the application relates to land in the community council’s area (and where the community council have previously asked their local planning authority to be notified of applications submitted to that authority). It requires a local planning authority, if requested to do so by the Welsh Ministers, to let the Welsh Minister know which community councils have asked to be notified.

***Section 25 – Power to make provision by development order in respect of applications to Welsh Ministers***

111. This section inserts section 62R into the TCPA 1990.
112. The effect is that the Welsh Ministers may make provision in a development order about the way in which applications made to them are dealt with. This includes provision about consultation by the Welsh Ministers and variation of applications.

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***Section 26 – Developments of national significance and applications made to Welsh Ministers: exercise of functions by appointed person***

113. This section inserts section 62S into the TCPA 1990. Section 62S introduces a new Schedule 4D to the TCPA 1990, which is set out in Schedule 3 to this Act.

***Section 27 – Applications to Welsh Ministers: further amendments***

114. This section introduces Schedule 4. Schedule 4 makes consequential amendments in relation to applications to the Welsh Ministers.