
WELSH STATUTORY INSTRUMENTS

2021 No. 1189 (W. 297)

TOWN AND COUNTRY PLANNING, WALES

**The Development Procedure (Consultees) (Wales)
(Miscellaneous Amendments) Order 2021**

Made - - - - - 25 October 2021
Laid before Senedd Cymru 27 October 2021
Coming into force in accordance with article 1(2)

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 59 and 74(1)(c) of the Town and Country Planning Act 1990(1) and now exercisable by them(2), and in exercise of the powers conferred on them by sections 61Z(8) and (9), 62R and 333(4B) of that Act(3), make the following Order.

Title, commencement, application and interpretation

1.—(1) The title of this Order is the Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021.

(2) This Order comes into force as follows—

- (a) this article, article 2(1), (2)(a) and (3)(b) and article 3(1), (2)(a) and (3) come into force on 1 December 2021;
- (b) article 2(2)(b), (3)(a) and (c) and article 3(2)(b) come into force on 24 January 2022.

(3) Where—

- (a) an application for planning permission is submitted before 25 April 2022; and
- (b) the applicant is required to have consulted a Fire and Rescue Authority pursuant to article 2D of the 2012 Order but has not done so;

-
- (1) 1990 c. 8 (“the 1990 Act”). Section 59 was amended by section 27 of, and paragraphs 1 and 3 of Schedule 4 to, and section 55 of, and paragraph 5 of Schedule 7 to, the Planning (Wales) Act 2015 (anaw 4) (“the 2015 Act”) and by section 1(2) of, and paragraphs 1 and 4 of Schedule 1 to, the Growth and Infrastructure Act 2013 (c. 27). There are amendments to section 74 which are not relevant to this instrument.
- (2) The functions of the Secretary of State were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); see the entry in Schedule 1 for the 1990 Act as substituted by S.I. 2000/253. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). See also section 59(4) of the 1990 Act which provides that a development order in relation to Wales means a development order made by the Welsh Ministers.
- (3) Section 61Z was inserted by section 17(1) and (2) of the 2015 Act. Section 62R was inserted by section 25 of the 2015 Act. Section 333(4B) was inserted by section 55 of, and paragraph 6(1) and (3) of Schedule 7 to the 2015 Act.

the applicant is to be treated as if they have complied with the requirements of articles 2D and 2F of the 2012 Order in respect of the requirement to consult a relevant Fire and Rescue Authority.

(4) Where an application for planning permission is made before 25 April 2022, article 14(1) of the 2012 Order does not apply so far as it requires a local planning authority to consult a Fire and Rescue Authority.

(5) Article 3(2)(b) does not apply to—

- (a) proposed applications notified to the Welsh Ministers and local planning authorities in accordance with article 5 of the 2016 Order before 24 January 2022;
- (b) applications made to the Welsh Ministers under section 62D of the 1990 Act before 24 January 2022.

(6) In this Order—

“The 1990 Act” (“*Deddf 1990*”) means the Town and Country Planning Act 1990(4);

“The 2012 Order” (“*Gorchymyn 2012*”) means the Town and Country Planning (Development Management Procedure) (Wales) Order 2012(5);

“The 2016 Order” (“*Gorchymyn 2016*”) means the Developments of National Significance (Procedure) (Wales) Order 2016(6).

Amendment of the 2012 Order

2.—(1) Schedule 4 to the 2012 Order is amended as follows.

(2) In the table—

(a) for row (x) substitute—

“(x)”	Development— (i) on land within Rivers and Sea – Flood Zone 3; (ii) on land within Rivers and Sea – Flood Zone 2; (iii) on land within TAN 15 Defended Zones.	The Natural Resources Body for Wales”
-------	--	---------------------------------------

(b) after row (y) insert—

“(z)”	Development— (i) involving waste development; (ii) involving the provision of dwellinghouses where either the number of dwellinghouses to be provided is 10 or more or the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the number of dwellinghouses to be provided is 10 or more; (iii) involving the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; (iv) carried out on a site having an area of 1 hectare or more;	The Fire and Rescue Authority concerned”
-------	---	--

(4) 1990 c. 8.

(5) S.I. 2012/801 (W. 110).

(6) S.I. 2016/55 (W. 25).

	<p>(v) involving the provision of 10 or more flats (whether by increasing the number of flats within an existing building or otherwise);</p> <p>(vi) involving the provision of residential accommodation of 10 or more rooms, not contained in dwellinghouses or flats, which are not solely used for cooking purposes and are not toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms; or</p> <p>(vii) involving the provision of residential accommodation of 10 or more rooms contained in a dwellinghouse or flat used as a house in multiple occupation, which are not solely used for cooking purposes and are not toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms.</p>	
--	--	--

(3) Under the heading “Interpretation of Table”—

(a) at the end of paragraph (m) omit “and”;

(b) for paragraph (n) substitute—

“(n) in paragraph (x)—

“Rivers and Sea —Flood Zone 3” (*“Afonydd a’r Môr – Parth Llifogydd 3”*) means an area with a greater than 1 in 100 chance of flooding from rivers and a greater than 1 in 200 chance of flooding from the sea in a given year, including climate change;

“Rivers and Sea —Flood Zone 2” (*“Afonydd a’r Môr – Parth Llifogydd 2”*) means an area with less than a 1 in 100 chance of flooding from rivers and less than 1 in 200 chance of flooding from the sea but greater than 1 in 1000 chance of flooding from the rivers and sea in a given year, including climate change; and

“TAN 15 Defended Zones” (*“Parthau Amddiffynedig TAN 15”*) means areas where flood risk management infrastructure provides a minimum standard of protection against flooding of 1 in 100 from rivers and 1 in 200 from the sea (plus climate change and freeboard) as set out in the Flood Map for Planning published by Natural Resources Wales;”;

(c) after paragraph (n) insert—

“(o) in paragraph (z) “house in multiple occupation” does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004.”

Amendment of the 2016 Order

3.—(1) Schedule 5 to the 2016 Order is amended as follows.

(2) In the table—

(a) for row (u) substitute—

“(u)	Development— (i) on land within Rivers and Sea — Flood Zone 3;	The Natural Resources Body for Wales”
------	---	---------------------------------------

	(ii) on land within Rivers and Sea — Flood Zone 2; (iii) on land within TAN 15 Defended Zones.	
--	---	--

(b) after row (v) insert—

“(w)	Development— (i) involving waste development; (ii) involving the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or (iii) carried out on a site having an area of 1 hectare or more.	The Fire and Rescue Authority concerned”
------	---	--

(3) Under the heading “Interpretation of Table” for paragraph (j) substitute—

“in paragraph (u)—

- (i) “Rivers and Sea —Flood Zone 3” (“*Afonydd a’r Môr – Parth Llifogydd 3*”) means an area with a greater than 1 in 100 chance of flooding from rivers and a greater than 1 in 200 chance of flooding from the sea in a given year, including climate change;
- (ii) “Rivers and Sea —Flood Zone 2” (“*Afonydd a’r Môr – Parth Llifogydd 2*”) means an area with less than 1 in 100 chance of flooding from rivers and less than 1 in 200 chance of flooding from the sea but greater than 1 in 1000 chance of flooding from the rivers and sea in a given year, including climate change; and
- (iii) “TAN 15 Defended Zones” (“*Parthau Amddiffynedig TAN 15*”) means areas where flood risk management infrastructure provides a minimum standard of protection against flooding of 1 in 100 from rivers and 1 in 200 from the sea (plus climate change and freeboard) as set out in the Flood Map for Planning published by Natural Resources Wales.”

25 October 2021

Julie James
Minister for Climate Change, one of the Welsh
Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (“the 2012 Order”) and the Developments of National Significance (Procedure) (Wales) Order 2016 (“the 2016 Order”) in relation to pre-application consultation and consultation before the grant of planning permission.

Article 2 amends the table in Schedule 4 to the 2012 Order (consultations before the grant of planning permission) to—

- (a) substitute the category of development at risk of flooding on which the Natural Resources Body for Wales are to be consulted (article 2(2)(a) and (3)(b));
- (b) add a category of development on which Fire and Rescue Authorities are to be consulted (article 2(2)(b) and (3)(a) and (c)).

Article 1(3) provides that where an application for planning permission is submitted before 25 April 2022 and the applicant is required to have consulted a Fire and Rescue Authority pursuant to article 2D of the 2021 Order but has not done so, the applicant is to be treated as if they have complied with the requirements of articles 2D and 2F of the 2012 Order in respect of the requirement to consult a relevant Fire and Rescue Authority.

Article 1(4) provides that the requirement for a local planning authority to consult a Fire and Rescue Authority will not apply in relation to an application for planning permission made before 25 April 2022.

Article 3 amends the table in Schedule 5 to the 2016 Order (duty to consult before grant of permission) to—

- (a) substitute the category of development at risk of flooding on which the Natural Resources Body for Wales are to be consulted (article 3(2)(a) and (3));
- (b) add a category of development on which Fire and Rescue Authorities are to be consulted (article 3(2)(b)).

Article 1(5) provides that article 3(2)(b) does not apply to:

- (a) proposed applications notified to the Welsh Ministers and local planning authorities in accordance with article 5 of the 2016 Order before 24 January 2022;
- (b) applications made to the Welsh Ministers under section 62D of the 1990 Act before 24 January 2022.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Local Government Strategic Finance Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.