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Llywodraeth Cymru
Welsh Government

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Guidance

The Town and Country Planning (Notification) (Wales) Direction 2012

Date of issue: 30 July 2012

The Town and Country Planning (Notification) (Wales) Direction 2012

Audience	Chief Planning Officers of Local Planning Authorities; Businesses; Government Agencies; Other Public Sector Groups; Professional Bodies and Interest Groups; Voluntary Groups and the general public.
Overview	This circular and direction set out new requirements for local planning authorities to refer certain planning applications to the Welsh Ministers, to enable them to decide whether they wish to call in the application for their determination.
Action required	<p>For local planning authorities to be aware that from 30 July 2012:</p> <ol style="list-style-type: none">1. Circular 07/12, which requires different types of planning applications to be referred to the Welsh Ministers, takes effect;2. Welsh Office Circular 39/92, which requires planning applications to be referred to the Welsh Ministers, is cancelled;3. Welsh Office Circular 61/93, which requires certain types of shopping related planning applications to be referred to the Welsh Ministers, is cancelled;4. Part of paragraph 52 of Minerals Planning Policy (Wales) Minerals Technical Advice Note (Wales) 1: Aggregates (2004), is cancelled. <p>This circular and direction require planning applications falling with the 'Notification Development' criteria to be referred, where the local planning authority does not propose to refuse them.</p>
Further Information	Decisions Branch Planning Division Welsh Government Cathays Park Cardiff, CF10 3NQ Tel: 029 2082 3878 Email: planning.division@wales.gsi.gov.uk
Additional copies	This guidance is available from the Welsh Government website at: http://wales.gov.uk/topics/planning/policy/circulars/nafw/?lang=en
Related documents	<p>Review of Directions Requiring Planning Applications to be Referred to the Welsh Ministers. Consultation document (2011) - available on the Welsh Government website at: http://wales.gov.uk/consultations/planning/reviewofdirections/?lang=en&status=closed</p> <p>Review of Directions Requiring Planning Applications to be referred to the Welsh Ministers. Summary of responses (2012) - available on the Welsh Government website at: http://wales.gov.uk/consultations/planning/reviewofdirections/?lang=en&status=closed</p>

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Annex 1 - The Town and Country Planning (Notification) (Wales) Direction 2012

The Town and Country Planning (Notification) (Wales) Direction 2012

INTRODUCTION

1. Section 77 of the Town and Country Planning Act 1990 allows the Welsh Ministers to give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order, to be referred to them instead of being determined by local planning authorities.
2. Article 14(1) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 gives the Welsh Ministers the power to issue directions to local planning authorities requiring them to consult with specified persons before granting planning permission for certain types of development. Article 18(1) gives the Welsh Ministers power to issue directions restricting the grant of planning permission in respect of specified development - either indefinitely or for a specified period. This circular cancels some circulars containing existing directions and part of paragraph 52 in Minerals Planning Policy (Wales) Minerals Technical Advice Note (Wales) 1. Aggregates, which require certain planning applications to be referred to the Welsh Ministers. A new direction is set out at Annex 1, which sets out revised criteria for referring applications. This circular is intended to ensure that the Welsh Ministers are consulted only where necessary and all decisions are taken at the appropriate level.

CONTEXT FOR NEW DIRECTION

3. A review of directions has been undertaken by the Welsh Government and has been informed by:
 - a review of data relating to planning applications referred under extant directions and called in since 2005.
 - responses to the consultation paper 'Review of Directions Requiring Planning Applications to be Referred to the Welsh Ministers' - WAG10-11529 (2011).
4. It was determined through the review that on average, only 15 per cent of applications that were referred to the Welsh Ministers are called in and as a result, it was concluded that not all of the extant directions reviewed remained appropriate, given the changes that have occurred in the planning system in Wales. The review and consultation process also confirmed that there were differences in the way in which local planning authorities interpreted the existing requirements, which had resulted in directions being applied inconsistently across Wales.
5. The new direction introduces revised criteria that local planning authorities need to use to determine whether planning applications should be referred to the Welsh Ministers. It identifies the type of development which may raise issues of more than local importance and which the Welsh Ministers may wish to call in, which is the purpose of the notification process.

COMMENCEMENT AND EXTENT

6. With effect from 30 July 2012, the guidance contained in this circular and the direction at Annex 1 will replace the provisions of the following directions, which will be cancelled, insofar as they apply in relation to Wales:

- Welsh Office Circular 39/92: The Town and Country Planning General Regulations 1992 The Town and Country Planning (Development Plans and Consultation) Directions 1992.
- Welsh Office Circular 61/93: Town and Country Planning (Shopping Development) (England and Wales) (No. 2) Direction 1993.
- Part of paragraph 52 of Minerals Planning Policy (Wales) Minerals Technical Advice Note (Wales) 1: Aggregates (2004) -

'The Welsh Assembly Government wishes to be notified of such exceptions to give the opportunity to consider whether it is necessary to call in the determination of the proposal.'

7. It is not proposed to alter any of the remaining directions including:

- Welsh Office Circular 1 / 98: Planning and the Historic Environment: Directions by the Secretary of State for Wales;
- Joint Circular ODPM, DoT, NAW 1/03: Safeguarding Aerodromes, Technical Sites and Military Explosives Storage Areas: The Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002; or
- NAW Circular 36/2004 and Circular Letter 06 - 04 of 4 August 2004: Control of Development in Airport Public Safety Zones.

8. This circular and the direction at Annex 1, apply only in relation to Wales.

THE DIRECTION

9. The direction does not affect the power of the Welsh Ministers under section 77 of the Town and Country Planning Act 1990, to direct that any particular planning application should be called in for their own determination, irrespective of whether it falls within the terms of the new direction, having regard to their policy on call in.

PURPOSE AND SCOPE

10. The new direction clarifies the arrangements and criteria for consulting the Welsh Ministers in relation to planning applications for particular types of development. The purpose of the direction is to give the Welsh Ministers an opportunity to consider whether to exercise their call in powers under section 77. The effect of the direction is to require local planning authorities to refer any application which falls within paragraph 3. of the direction and in respect of which, the authority does not propose to refuse planning permission, to the Welsh Ministers. Applications are required to be sent to the appropriate office of the Welsh Government, in accordance with the provisions in paragraph 5. of the direction.

NEW NOTIFICATION REQUIREMENTS - 'NOTIFICATION DEVELOPMENT'

11. The direction introduces a new notification requirement for local planning authorities to refer applications, where they are minded to grant planning permission for certain types of development. This development is called 'notification development' and consists of five categories:

i Flood Risk Area Development

12. This is a new requirement for local planning authorities to refer applications for emergency services or highly vulnerable development, where the whole of the land where the development is proposed to be located, is within flood zone C2, shown on the development advice map (DAM). It should not be assumed that the development of sites which are only partially within flood zone C2 is acceptable and TAN 15: Development and Flood Risk advises that in such cases, it will be for the planning authority to judge whether the development can be justified.

13. In cases consisting of residential development, the threshold for requiring notification is set at 10 or more dwellings, including flats. Again, it should not be assumed that development involving fewer than 10 dwellings is acceptable and current policy advice contained in TAN 15 advises against permitting such vulnerable development in flood zone C2.

14. The types of development listed in the direction for 'emergency services' and 'highly vulnerable development', are based on those set out in Figure 2 of Technical Advice Note (TAN) 15: Development and Flood Risk (2004) and will therefore already be familiar to local planning authorities and planning practitioners. In relation to 'emergency services development', the TAN refers to facilities which need to be operational and accessible at all times and may therefore include other types of development to those listed in Figure 2.

15. In relation to 'highly vulnerable development', the TAN refers to development where the ability of occupants to decide on whether they wish to accept the risks to life and property associated with flooding, or to manage the consequences of such a risk, is limited. The direction is intended to include all emergency service and highly vulnerable development and the lists contained in the direction should not therefore be treated as exhaustive. The reference to 'development advice map' (DAM) given under 'flood risk area' refers to the latest published DAM on the Welsh Government website, where further updates will be provided.

ii Significant Residential Development

16. This category requires local planning authorities to refer applications where they are minded to grant planning permission for residential development of more than 150 residential units, or residential development on more than 6 hectares of land, which is not in accordance with one or more provisions of the development plan in force.

17. This is a similar provision to that which is included within Annex 3 of Circular 39/92. That circular also contains a requirement to refer 'any other development' which would 'significantly prejudice the implementation of the development plan's policies and proposals', which resulted in some local planning authorities interpreting this to include minor residential proposals, which were also referred to the Welsh Ministers.

18. The new direction does not contain a requirement to refer 'any other development' that is not in accordance with the development plan and there is therefore no requirement to refer any residential proposal, unless it exceeds 150 dwellings or includes residential development on more than 6 hectares of land.

iii Minerals Development

19. This is a new requirement which requires local planning authorities to refer applications where they are minded to grant planning permission for the winning and working of minerals to be carried out and the development is not in accordance with one or more provisions of the development plan in force.
20. The direction is restricted to development which is to be carried out at a new site or an extension to an existing site and there is therefore no requirement to refer minor development or applications to vary conditions on existing consents that may be made under Section 73 of the Town and Country Planning Act 1990.

iv Waste Development

21. This is a new requirement which requires local planning authorities to refer applications where they are minded to grant planning permission for development which is intended for use wholly or mainly for the deposit of waste into or on to land and the development is not in accordance with one or more provisions of the development plan in force.
22. The direction has been restricted to avoid other minor waste development from being referred.

v Aggregates Development in National Parks and Areas of Outstanding Natural Beauty.

23. The requirement to refer proposals for the extraction of aggregates on new sites or extensions to existing sites in National Parks and Areas of Outstanding Natural Beauty is currently contained within the latter part of paragraph 52 of Minerals Technical Advice Note (Wales) 1: Aggregates (March 2004).
24. The purpose of bringing this existing requirement into the new direction, is to assist the consolidation of directions and to simplify the system of referring applications for local planning authorities.

REMOVAL OF 'DEPARTURE APPLICATION' REQUIREMENTS

25. Through the cancellation of the direction in Circular 39/92, the new direction removes the requirement for local planning authorities to refer 'departure applications' to the Welsh Ministers including, development which is considered to 'significantly prejudice the implementation of the development plan's policies and proposals' (Annex 3 paragraph 3.). Furthermore, the direction also removes the requirement for local planning authorities to send a copy of the permission to the Welsh Ministers, where planning permission is granted on a departure application (Annex 3 paragraph 6.).
26. The direction retains the requirement to refer applications for development that are not in accordance with the adopted development plan in relation to three of the new categories ('Significant Residential', 'Minerals' and 'Waste' development) however, this requirement is subject to other specific criteria. The cancellation of

the provision to refer 'departure applications' in Circular 39/92, will not however affect the ability of any individual or group to request the call in of any application.

27. Local planning authorities will be aware that the Welsh Government records the number of applications received and determined through its Development Control Quarterly Returns system. Details of the information collected are being reviewed and one of the requirements included in the pilot scheme, currently requires local planning authorities to identify those applications that had been determined contrary to the case officer's recommendation. This will assist in identifying the number of cases where applications are determined contrary to the policies of the development plan, as an alternative to the 'departure application' notification requirements, which are cancelled by this circular.

SUBMISSION OF INFORMATION TO THE WELSH MINISTERS

28. The direction contains a list of information relating to the planning application that is required to be submitted to the Welsh Ministers, where notification is required, which will enable them to determine whether to call in the application. This list expands on the previous list contained within Annex 3 of Circular 39/92, to reflect current planning application submission requirements.
29. Over 40% of applications in Wales are made through electronic submission and many local planning authorities now display information relating to planning applications on their websites. To assist the process of submitting applications to the Welsh Ministers, there is now provision for information to be sent electronically, or in hard copy.

RESTRICTION ON THE GRANT OF PLANNING PERMISSION

30. Where the local planning authority is required to consult the Welsh Ministers, the direction places a restriction on the grant of planning permission for a period of 21 days, beginning with the date the local planning authority is notified in writing by Welsh Government Officials, is the date upon which the required information was received.
31. The direction also contains a provision for the authority to proceed to determine the application before the expiry of the 21 day period, if they have received notification in writing that the Welsh Ministers do not intend to call in or do not consider the development to be notification development.

MONITORING AND REVIEW

32. In simplifying the new direction and making the system more relevant to the current planning system in Wales, it is not envisaged that the number of applications referred to the Welsh Ministers will increase. However, it is anticipated that there will be a more consistent approach among local planning authorities to the process of referring applications. By modifying the notification criteria in this way, it is anticipated that a higher proportion of those applications that are referred may raise issues of more than local importance than is presently the case. However, it does not necessarily follow that more applications will be called in, as each decision depends on the individual circumstances of the case.
33. It is not anticipated that requests for applications to be called in will be significantly affected by these changes. Although, it will be possible for applications that are no longer required to be referred under the new direction, to

be referred for consideration, the criteria used to determine whether an application should be called in has not changed. The Welsh Ministers would still therefore need to be satisfied that the proposed development raised issues of more than local importance, for the application to be called in.

34. The Welsh Government will closely monitor the number of applications that are referred to the Welsh Ministers resulting from the new direction and the numbers of applications that are consequently called in and its effect will be reviewed when the new direction has been operating for an appropriate period of time. As indicated in paragraph 27. above, the monitoring of applications that are determined contrary to the case officer's recommendation is also under review and may be introduced as part of the Development Control Quarterly Returns system.

Rosemary F Thomas

Chief Planner / Deputy Director

Chief Executive:

County and County Borough Councils in Wales

The National Park Officer:

National Park Authorities

THE TOWN AND COUNTRY PLANNING (NOTIFICATION) (WALES) DIRECTION 2012

The Welsh Ministers, in exercise of the powers conferred by articles 18(1), 20 and 22(5) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012⁽¹⁾, give the following Direction.

Commencement

1. This Direction comes into force on 30 July 2012.

Interpretation

2. In this Direction—

“electronic communication” (*“cyfathrebiad electronig”*) has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation)⁽²⁾;

“emergency services development” (*“datblygiad gwasanaethau brys”*) means development relating to facilities which need to be operational and accessible at all times including hospitals, ambulance stations, fire stations, police stations, coastguard stations, command centres, emergency depots or buildings used to provide emergency shelter in time of flood;

“flood risk area” (*“ardal lle y gall fod perygl o lifogydd”*) means land in an area within flood zone C2 being areas of the flood plain without significant flood defence infrastructure as shown on the interactive development advice map issued by the Welsh Assembly Government from time to time;

“flood risk area development” (*“datblygiad mewn ardal lle y gall fod perygl o lifogydd”*) means—

- (a) emergency services development; or
 - (b) highly vulnerable development, other than residential development where the number of dwellings to be provided is fewer than 10;
- in either case where the entire site on which the development is proposed to be undertaken is within a flood risk area;

“highly vulnerable development” (*“datblygiad a all fod mewn perygl mawr”*) means development relating to residential premises (including hotels and caravan parks), public buildings such as schools, libraries and leisure centres; industrial development where there would be a risk to the public and the water environment if the site is inundated such as power stations, chemical plants and incinerators; and waste disposal sites;

“minerals development” (*“datblygiad mwynau”*) means development which—

- (a) consists of or includes the winning and working of minerals;
- (b) is to be carried out at a new site or an extension to an existing site; and
- (c) does not accord with the provisions of the development plan in force in the area where the application site is situated;

“notification development” (*“datblygiad hysbysu”*) means—

- (a) flood risk area development;
- (b) significant residential development;
- (c) minerals development;
- (d) waste development;

⁽¹⁾ S.I. 2012/801.

⁽²⁾ 2000 c.7. Section 15(1) was amended by section 406(1) of and paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

- (e) development which consists of the extraction of aggregates from new or existing sites within a National Park⁽³⁾ or an Area of Outstanding Natural Beauty⁽⁴⁾;

“significant residential development” (“*datblygiad preswyl sylweddol*”) means development which—

- (a) includes more than 150 dwellings or is residential development on a site measuring more than 6 hectares; and
- (b) does not accord with the provisions of the development plan in force in the area where the application site is situated;

“waste” (“*gwastraff*”) means any substance or object which the holder discards or intends or is required to discard;

“waste development” (“*datblygiad gwastraff*”) means development which—

- (a) is intended for use wholly or mainly for the deposit of waste into or on to land; and
- (b) does not accord with the provisions of the development plan in force in the area where the application site is situated.

Application

3. This Direction applies to any application for planning permission—

- (a) relating to land in Wales;
- (b) made on or after 30 July 2012;
- (c) for development which is notification development;
- (d) which the local planning authority does not propose to refuse.

Notification to the Welsh Ministers

4. Where a local planning authority do not propose to refuse an application for notification development, the authority must notify the Welsh Ministers.

5. Where a local planning authority is required to notify the Welsh Ministers, they must as soon as practicable send to the Welsh Ministers by means of electronic communication or otherwise—

- (a) a copy of the application (including copies of any accompanying plans and drawings and any appropriate flood risk or other assessment) and supporting information;
- (b) a copy of the requisite notice;
- (c) a copy of any representations made to the authority in respect of the application (including any views expressed by a government department, another local planning authority or other consultee);
- (d) a copy of any report on the application prepared by an officer of the authority;
- (e) a copy of any screening opinion issued under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁽⁵⁾;
- (f) a copy of any appropriate assessments carried out under the Conservation of Habitats and Species Regulations 2010⁽⁶⁾;
- (g) a statement of the material considerations which the authority consider indicate (if such be the case) that an application for significant residential development, minerals development or waste development should be determined otherwise than in accordance with the local development plan adopted or approved in relation to the area where the application site is situated.

⁽³⁾ For the designation of national parks in Wales, see Part 2 of the National Parks and Access to the Countryside Act 1949 (c.97).

⁽⁴⁾ For the designation of Areas of Outstanding Natural Beauty see Part 4 of the Countryside and Rights of Way Act 2000 (c.37).

⁽⁵⁾ S.I. 1999/293, to which there are amendments.

⁽⁶⁾ S.I. 2010/490, to which there are amendments.

Relevant period before granting permission on a departure application

6. Subject to paragraph 7, where a local planning authority is required to notify the Welsh Ministers, the authority must not grant planning permission on the application until the expiry of the period of 21 days beginning with the date which the Welsh Ministers tell the authority in writing is the date upon which they received the information specified in paragraph 5.

7. The local planning authority may proceed to determine the application if, before the expiry of the period referred to in paragraph 6, the Welsh Ministers notify the authority that—

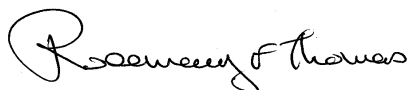
- (a) the Welsh Ministers do not intend to issue a direction under section 77 of the Town and Country Planning Act 1990 in respect of that application; or
- (b) the Welsh Ministers do not consider the development to be notification development.

Cancellation

8. The following Directions are cancelled in so far as they apply in relation to Wales, save that they continue to apply in relation to any application for planning permission relating to land in Wales made before 30 July 2012—

- (a) Circular 39/92: The Town and Country Planning (Development Plans and Consultation) Directions 1992;
- (b) Circular 61/93: Town and Country Planning (Shopping Development) (England and Wales) (No. 2) Direction 1993.

Signed by authority of the Minister for Environment and Sustainable Development, one of the Welsh Ministers



Rosemary Thomas
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