

# PLANNING (WALES) ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 6 Development Management etc**

##### ***Section 28 – Power of local planning authority to require information with application***

115. This section applies section 62(4A) of the TCPA 1990 to Wales. The subsection relates to local planning authorities' power to require information to accompany planning applications. Information requests must be reasonable and relevant.

##### ***Section 29 – Invalid applications: notice and appeal***

116. This section inserts sections 62ZA, 62ZB, 62ZC and 62ZD into the TCPA 1990, to allow for a right of appeal against a local planning authority's decision that an application is not valid. The sections apply to applications for planning permission and for any consent, agreement or approval related to planning permission.
117. Section 62ZA requires a local planning authority to give formal notice to an applicant where they consider that the application submitted to them does not comply with certain information requirements and therefore invalid. The notice must identify the requirement in question and set out the authority's reasons for thinking the application does not comply with it. The Welsh Ministers, by development order, may make provision about the giving of notice, including the information to be included and how and when it is to be given.
118. Section 62ZB provides applicants with a right of appeal to the Welsh Ministers where the local planning authority has served notice under section 62ZA that an application is considered invalid, on one or more stated grounds. The Welsh Ministers may, by development order, prescribe requirements for submitting an appeal, including how and when the notice of appeal is to be made and the information that is to accompany it. Appeals are to be determined on the basis of written representations.
119. Section 62ZC provides that, unless the Welsh Ministers give a direction under section 62ZD, an appointed person determines appeals made to the Welsh Ministers under section 62ZB. (It is anticipated that persons will be appointed from the Planning Inspectorate Wales.) It also sets out the functions of the appointed person. They have the same powers and duties in relation to an appeal as the Welsh Ministers.
120. Section 62ZD allows the Welsh Ministers to recover for decision by them an appeal under section 62ZB that would otherwise be determined by an appointed person.
121. **Section 28** also amends section 79 of the TCPA 1990 to enable the Welsh Ministers to decide, when determining an appeal under section 78, whether an information requirement of a local planning authority is reasonable and relevant.

***Section 30 – Revocation of saving of Town and Country Planning (Applications) Regulations 1988***

122. This section revokes the saving of the Town and Country Planning (Application) Regulations 1988. The effect is that those regulations, which were made under an earlier Town and Country Planning Act and concern the procedures for planning applications, are fully revoked. The procedures for applications under the TCPA 1990 are now set out in development orders under section 62 of the TCPA 1990.

***Section 31 – Welsh language***

123. This section amends section 70 of the TCPA 1990. Section 70 makes provision about the matters to which a local planning authority must have regard when dealing with an application for planning permission. The effect of the amendment is that a local planning authority in Wales must have regard to considerations relating to the use of the Welsh language if such considerations are material to the application. The amendments to section 70 do not change the current law in relation to material considerations.

***Section 32 – Power to decline to determine retrospective applications***

124. This section amends section 70C of the TCPA 1990. The effect of the amendment is that a local planning authority in Wales may decline to determine a retrospective planning application if an enforcement notice has previously been issued in relation to any part of the development.

***Section 33 – Decision notices***

125. This section inserts section 71ZA into the TCPA 1990.
126. Section 71ZA enables the Welsh Ministers by development order to specify the form that notices of decisions on applications for planning permission should take, the manner in which they are to be given, and the particulars to be contained in them. These notices are referred to as “decision notices”.
127. The new section requires a decision notice to specify any plans or other documents that form part of the planning permission. The planning permission is deemed to be granted subject to the condition that the development must be carried out in accordance with the plans and documents specified in the decision notice.
128. Section 71ZA also requires the local planning authority to issue a revised version of the decision notice where consents are given or conditions changed. The revised version of the decision notice must contain matters specified in a development order, which might include a requirement to state whether a condition has been discharged or approved and, if it has, the date of the approval and reference number relating to the details submitted.
129. The provision applies whether planning permission is granted by local planning authorities or the Welsh Ministers. The provision also applies to planning permission granted under section 90 (development with government authorisation), section 102 (orders requiring discontinuance of use or alteration or removal of buildings or works) and section 141 (action by Welsh Ministers in relation to purchase notice) of the TCPA 1990.

***Section 34 – Notification of development***

130. This section inserts section 71ZB into the TCPA 1990.
131. Section 71ZB places a requirement on developers to notify the local planning authority of the date on which the development is to begin, the details of the planning permission to be implemented and any other matters specified in a development order. The new provision requires a developer to display on or near the development site a notice of

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the decision to grant planning permission for that development. The notice must be displayed throughout the development period.

132. It also enables the Welsh Ministers by a development order to specify the categories of planning permission to which the requirement applies (for example, developments of national significance and major development); the form and content of such notices; and how a copy of the grant of planning permission must be displayed.
133. It requires, where relevant, decision notices to set out the duties to be undertaken by the developer in relation to giving and displaying notices. Planning permission is to be granted subject to the deemed condition that these requirements must be complied with.

***Section 35 – Duration of planning permission: general***

134. This section makes a number of amendments to section 91 of the TCPA 1990 (General condition limiting duration of planning permission) and inserts new subsections (3ZA), (3ZB), (3ZC) and (3ZD).
135. Subsections (3ZA) and (3ZB) apply if planning permission is granted under section 73 of the TCPA 1990 which varies or removes conditions from a previous grant of planning permission. If the section 73 permission is granted without a time limit condition and the previous planning permission was granted subject to a time limit condition, the section 73 permission is granted subject to a deemed time limit condition that the development is started no later than the date on which the previous planning permission required the development to be started. This means that, unless a new period is stated, a new permission under section 73 lasts for the unexpired period of the original permission.
136. Subsection (3ZC) and (3ZD) define the term previous planning permission and section 73 permission.

***Section 36 – Duration of outline planning permission***

137. This section makes a number of amendments to section 92 of the TCPA 1990 (Outline planning permission) and inserts new subsections (3A), (3B), (3C), (3D) and (3E).
138. The term ‘outline planning permission’ is defined, for the purposes of sections 91 and 92 of the TCPA 1990, in section 92(1). It means planning permission granted with matters reserved for subsequent approval by the local planning authority or the Welsh Ministers.
139. Subsections (3A) and (3B) provide that where outline planning permission is granted under section 73 without a condition as to the period within which an application for approval of reserved matters must be made, the permission is subject to a deemed condition that approval for reserved matters must be made no later than the previous planning permission required the application to be made. If an application is not made within that period, the permission lapses.
140. Subsections (3C) and (3D) provide that if outline planning permission is granted under section 73 without a condition as to when the development is started, the permission will be subject to a deemed condition that the development is started no later than the previous planning permission required it to be started. If the development is not started within that period, the permission will lapse. This means that, unless a new period is stated, the new permission lasts for the unexpired period of the original permission.
141. Subsection (3E) defines a previous planning permission.

***Section 37 – Consultation etc. in respect of certain applications relating to planning permission***

142. The provision inserts section 100A into the TCPA 1990. It makes provision for consultation in respect of:
- a) applications for approval of reserved matters;
  - b) applications for any other consent, agreement or approval required by any conditions or limitation subject to which planning permission has been granted; and
  - c) applications for non-material changes to planning permission.
143. This section provides that where a local planning authority decide to consult a statutory consultee who was consulted on the original application, the authority cannot determine that application before the end of the period prescribed in a development order. Those consulted must give a substantive response within that period and report to the Welsh Ministers on their compliance with this duty.
144. It also enables the Welsh Ministers, by development order, to specify:
- a) the information to be provided by the local planning authority in respect of the consultation,
  - b) the requirements of a substantive response; and
  - c) the form and contents of the compliance report.

***Section 38 – Stopping up or diversion of public paths where application for planning permission made***

145. This section amends sections 257 of the TCPA 1990 to enable the process leading to the stopping up or diversion of public paths to start once an application for planning permission has been made but before planning permission has been granted.
146. **Section 257** currently enables an order authorising the stopping up or diversion of footpaths (and certain other paths) where this is necessary in order to enable development to be carried out in accordance with planning permission (or by a government department). The amendment enables an order stopping up or diverting a public path to be made in anticipation of planning permission.
147. The section also amends section 259 of the TCPA 1990 so that the competent authority or Welsh Ministers may not confirm a stopping up or diversion order until planning permission has actually been granted. It further amends section 259 so that the competent authority or Welsh Ministers may not confirm an order unless satisfied that it is necessary to enable the development to be carried out.

***Section 39 – Exercise of functions of local planning authority relating to applications***

148. Section 39(1) of the Act inserts sections 319ZA, 319ZB, 319ZC and 319ZD into the TCPA 1990.
149. Section 319ZA enables the Welsh Ministers to make regulations to require a local planning authority to delegate functions relating to planning applications. The terms of the delegation may be prescribed in the regulations. For example, regulations might provide for a national scheme of delegation relating to planning applications under Part 3 of the TCPA 1990. The scheme might make provision for all applications to be delegated to appointed officers for determination apart from certain exceptions.
150. Section 319ZB enables the Welsh Ministers to make regulations to prescribe the size and make up of any committee or sub-committee to which a planning function

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is delegated. It disapplies a provision of the Local Government Act 1972 whereby proceedings are not invalid if there is a vacancy in a committee or sub-committee.

151. This section also prevents a local planning authority from delegating a relevant function to a committee or sub-committee that does not satisfy the procedural requirements.
152. Section 319ZC supplements sections 319ZA and 319ZB. It provides that sections 101 and 102 of the Local Government Act 1972 are subject to sections 319ZA and 319ZB and any regulations made under those sections. (Section 101 allows local authorities to make arrangements for the discharge of their functions by a committee, sub-committee or officer, or by another local authority. Section 102 makes provision about the appointment by local authorities of committees and sub-committees.) References to arrangements under sections 101 and 102 of the 1972 Act in other legislation will apply to the arrangements required by the new sections 319ZA and 319ZB, this includes sections 13 and 20 of the Local Government and Housing Act 1989 (see below).
153. New section 319ZC enables regulations to make specific provision for cases where local planning authorities are exercising functions jointly or where one local planning authority exercises functions for another local planning authority.
154. Section 319ZD provides interpretation for the purposes of the above sections.
155. Section 39(2) of the Act makes a related amendment to section 316(3) of the TCPA 1990. Section 316 of TCPA 1990 deals with delegations in a particular type of case. The section confers a power to make regulations about the application of various Parts of TCPA 1990 to the land owned by local planning authorities. Under section 316(3) regulations may regulate a local planning authority's arrangements for discharging their functions when they determine applications relating to their own land, "notwithstanding anything in section 101 of the Local Government Act 1972". Section 39(2) of the Act inserts a reference to sections 319ZA to 319ZC, so that regulations under section 316(3) will prevail over sections 319ZA to 319ZC in the same way.
156. Section 39(3) and (4) of the Act inserts references to new sections 319ZA to 319ZC into the lists of general provisions of TCPA 1990 that are applied to the Planning (Listed Buildings and Conservation Areas) Act 1990 and Planning (Hazardous Substances) Act 1990.
157. Regulations under the new sections may identify the functions to which their requirements are to apply and the new provisions can be applied to the Listed Buildings and Hazardous Substances Acts.
158. Section 39(5) of the Act amends sections 13 and 20 of the Local Government and Housing Act 1989 so that those sections apply to a joint planning board constituted for an area in Wales by an order under section 2(1B) of the TCPA 1990. Section 13 of the 1989 Act makes provision about the voting rights of certain people that local authorities appoint to committees. Section 20 enables the Welsh Ministers to make regulations specifying procedural provisions that local authorities must include in their standing orders. Both sections already apply to the other authorities in Wales that can be local planning authorities, and the amendments put joint planning boards in the same position.

***Section 40 – Joint planning boards to be hazardous substances authorities***

159. Broadly speaking, the presence of a hazardous substance on or under land requires the consent of a hazardous substances authority. This section inserts a new subsection into section 3 of the Planning (Hazardous Substances) Act 1990 to establish that, save in certain circumstances, a joint planning board is a hazardous substances authority and will therefore exercise functions accordingly under that Act.

***Section 41 – Power to make provisions enabling joint planning boards to exercise development management functions in National Parks***

160. The Welsh Ministers 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. By virtue of section 2(1D) of the TCPA 1990, a joint planning board's united district cannot include any part of a National Park; and section 4A confirms that a National Park authority is the sole local planning authority for its National Park.
161. **Section 41** of the Act enables the Welsh Ministers, by regulations, to remove this restriction and extend the joint planning board provisions in section 2 of the TCPA 1990 to include the areas of National Parks. Regulations under section 41 of the Act allow the Welsh Ministers to establish a united district that includes all or part of a National Park, and to establish a joint planning board to be the local planning authority in place of the National Park Authority for certain purposes.
162. **Section 41** enables the establishment of a joint planning board as the local planning authority for any part of its area formed by a National Park for the purposes of the TCPA 1990 (which provides for matters including the determination of planning applications), the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990 but not for the purposes of the PCPA 2004 (which provides for matters including the preparation of local development plans). The effect of this is that if part or all of a National Park area is within the area of a joint planning board, the National Park Authority, not the joint planning board, prepares the local development plan for the National Park area.
163. The regulation making powers in this section allow the Welsh Ministers to determine, for any part of a joint planning board's area including a National Park, whether the joint planning board or the National Park Authority is the hazardous substances authority. The section also enables the Welsh Ministers, when exercising their regulation making powers, to amend legislation of certain descriptions.

***Section 42 – Joint planning boards: power to make consequential and supplementary provision***

164. This section reorganises and inserts a new subsection into section 9 (Power to make consequential and supplementary provision about authorities) of the TCPA 1990.
165. It enables the Welsh Ministers, when making regulations containing provisions which are consequential upon or supplementary to the establishment of a joint planning board, to amend legislation of certain descriptions.