

SL(6)091 - Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) (Amendment) Order 2021

Background and Purpose

A new flood risk national planning policy and a new Flood Map for Planning ("FMP") were intended to come into force for planning purposes on 1 December 2021. The suite of changes included the introduction of specific criteria on which Natural Resources Wales ("NRW") had to be consulted in relation to certain matters of flood risk development

Following a change in policy by the Welsh Government, the new arrangements will no longer come into force on 1 December 2021 and the current policy and development advice map will continue to be used for planning decision making purposes beyond that date.

This [Order](#) amends the Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021 by removing the provisions containing requirements to consult NRW on flood risk development in accordance with the new FMP, as it will no longer be coming into force on 1 December 2021.

The effect of these amendments is that current NRW consultation requirements for flood risk development will continue.

Procedure

Negative.

This Order was made by the Welsh Ministers before it was laid before the Senedd. The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument



comes into force), and the explanation for the breach provided by Julie James MS, Minister for Climate Change, in a letter to the Llywydd dated 23 November 2021.

In particular, we note the following:

"...the Welsh Government has received correspondence and communications from local authorities that highlight legitimate and reasonable concerns with the arrangements for bringing TAN 15 and the Flood Map for Planning into effect on 1st December. These had been subject to a 9-week 'soft launch' period, following their informal release to stakeholders on 29 September. The 9-week period allowed for a transition between current and new policy frameworks in recognition that many planning applications would have been made on the basis of the existing policy framework, i.e. the 2004 version of TAN 15 and the Development Advice Map. It was expected that the majority of planning applications already submitted and in the system could be determined by 30 November, and therefore not be inadvertently affected by the new policy advice.

Local authorities and the development industry have demonstrated that the 9-week transition period has been insufficient for the purposes of enabling an orderly transition to the new policy framework...

...the pause in bringing TAN 15 and the Flood Map for Planning into effect has meant it has been necessary to omit provisions relating to Natural Resources Wales and flood risk development from the Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021."

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note that the Explanatory Memorandum to this Order provides that no regulatory impact assessment has been prepared. In particular, we note the following paragraphs in the Explanatory Memorandum:

"A separate Regulatory Impact Assessment (RIA) has not been prepared in respect of the 2021 Amendment Order as it revokes amendments to the DMPWO and DNSPO (in the 2021 Order) for consulting with NRW on development in flood risk areas before they come into force. This is considered to be a factual amendment and one that reflects the policy intent of the DAM continuing to be in use for planning decision making purposes beyond the 1 December; with NRW consultation requirements for development in flood risk areas remaining unchanged.

A comprehensive RIA will be undertaken as part of a future statutory instrument regarding amendments to NRW consultation requirements for development in flood risk areas. The Welsh Government is working collectively with NRW and local authorities to gather further evidence to inform these future changes before a new Flood Map for Planning can come into force for decision making purposes."



However, the Explanatory Note to the Order provides that a regulatory impact assessment *has* been prepared in relation to this Order. Can the Welsh Government explain this discrepancy between the Explanatory Note and the Explanatory Memorandum?

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note there has been no formal consultation on this Order. In particular, we note the following paragraph in the Explanatory Memorandum:

"Due to the need for the 2021 Amendment Order to come into force prior to 1 December (i.e. before provisions come into force that would have updated NRW consultation requirements to refer to a new Flood Map for Planning) the Welsh Government was unable to undertake a public consultation on these amending provisions.

Notwithstanding this, these amending provisions have no effect. The 2021 Amendment Order revokes amendments to the DMPWO and DNSPO (in the 2021 Order) for consulting with NRW on development in flood risk areas before they come into force. As a result, consultation with NRW on development in flood risk areas will continue to take place in accordance with the DAM.

By reverting to mapping and legislation to the default position, it will allow for further work to be undertaken on the Flood Map for Planning, and with local authorities, to ensure its robustness and that it is fit for purpose in accounting for local models of flood risk which incorporate climate change projections. It will effectively ensure any future legislative changes in respect of consulting with NRW on developments falling within the floodzones of a new flood map are underpinned by the best possible evidence."

Welsh Government response

Merit Scrutiny point 2:

We note the discrepancy between the Explanatory Note and the Explanatory Memorandum in relation to the preparation of a Regulatory Impact Assessment. It is confirmed that the Explanatory Memorandum sets out the correct position and that the Explanatory Note should provide that a Regulatory Impact Assessment has not been prepared in relation to the Order.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 6 December 2021 and reports to the Senedd in line with the reporting points above.

