

Notification Direction Guidance

THE TOWN AND COUNTRY PLANNING (NOTIFICATION) (COAL AND PETROLEUM) (WALES)
DIRECTION 2018

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 guidance 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

For local planning authorities to be aware that from 5 December 2018 :

The direction requires where a local planning authority does not propose to refuse an
application for coal and petroleum development, the authority must notify the Welsh
Ministers.

Further Information

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Additional copies

This guidance is available from the Welsh Government website at:

<https://gov.wales/topics/planning/policy/dear-cpo-letters/?lang=en>

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(WALES) DIRECTION 2018**

THE TOWN AND COUNTRY PLANNING (NOTIFICATION) (COAL AND PETROLEUM) (WALES) DIRECTION 2018

INTRODUCTION

1. Section 77 of the Town and Country Planning Act 1990 (the “1990 Act”) 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 18(1) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (S.I. 2012/801) (the “DMPO”) provides that the Welsh Ministers may give directions restricting the grant of planning permission by an LPA, either indefinitely or during such period specified in the directions, in respect of any development or in respect of any class so specified. In accordance with article 18(3), an LPA must deal with applications for planning permission for development to which such a direction applies in such manner as to give effect to the direction.

3. Article 22(5) of the DMPO provides that an LPA must provide such information about applications made under article 4 and 5 of that Order (applications for approval of reserved matter and applications for planning permission respectively), including information as to the manner in which any such application has been dealt with, as the Welsh Ministers may by direction require. Any such direction may include provision as to the persons to be informed and the manner in relation to which the information is to be provided.

4. THE TOWN AND COUNTRY PLANNING (NOTIFICATION) (COAL AND PETROLEUM) (WALES) DIRECTION 2018 is set out at Annex 1.

5. The notification requires that where a local planning authority does not propose to refuse an application for an application for the development of petroleum or the development of coal, as set out in the legislation, to notify the Welsh Ministers. The new notification direction will subsume the content of the current notifications on the development of unconventional oil and gas and the development of underground coal gasification.

Where a local planning authority is required to give such notification to 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 information specified in the Direction.

However, the local planning authority may proceed to determine the application if before the expiry of that 21 day period, the Welsh Ministers notify the authority that the Welsh Ministers do not intend to call-in the application in question under section 77 of the 1990 Act in respect of that application, or if the Welsh Ministers do not consider the development to be for the development of petroleum or the development of coal.

6. This guidance is intended to ensure that the Welsh Ministers are notified only where necessary and all decisions are taken at the appropriate level.

CONTEXT FOR NEW DIRECTION

7. In order to support Planning Policy Wales (PPW) 10 and a Written Statement on the Petroleum Licensing consultation, the Cabinet Secretary for Energy, Planning & Rural Affairs has requested that the current Notification Directions relating to unconventional oil and gas are replaced. The intent would be to encapsulate the current Notification Directions and extend them to any application for the development of petroleum or the development of coal.

8. This will provide Welsh Ministers an opportunity to consider whether appropriate scrutiny has been given to environmental and public health concerns, as these may raise issues of more than local importance. The Welsh Ministers may choose to call in the planning application, or if appropriate issue a direction that the application may not be approved until such time as directed by the Welsh Ministers.

COMMENCEMENT AND EXTENT

9. With effect from 5 December, the guidance contained in this circular and the direction at Annex 1 will require planning authorities who receive planning applications for the development of petroleum or the development of coal, to notify the Welsh Ministers

10. The Notification Direction covers Petroleum as defined in the Petroleum Act 1998. The definition of petroleum includes any mineral oil or relative hydrocarbon and natural gas existing in its natural strata. This therefore includes shale oil and gas and coal bed methane. The definition of coal is taken from the Coal Industry Act 1994. This covers coal and also underground coal gasification.

11. This guidance and the Direction at Annex 1, apply only in relation to Wales.

THE DIRECTION

12. The Direction does not affect the power of the Welsh Ministers under section 77 of the 1990 Act, 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

13. The Direction clarifies the arrangements and criteria for notifying the Welsh Ministers in relation to planning applications for that where a planning authority does not propose to refuse an application for an application for the development of petroleum or the development of coal, they must notify the Welsh Ministers.

14. 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 of the 1990 Act.

NOTIFICATION REQUIREMENTS

15. Paragraph 4 of the Direction introduces a notification requirement for local planning authorities to refer applications for petroleum or coal development to the Welsh Ministers where the authority does not propose to refuse such an application. Such information may be sent to Welsh Ministers electronically, or in hard copy. The notification requirement is inclusive of the provision of the information specified in paragraph 6 of the Direction.

RESTRICTION ON THE GRANT OF PLANNING PERMISSION

16. Where the local planning authority is required to notify the Welsh Ministers, paragraph 6 of the Direction places a restriction on the grant of planning permission for a period of 21 days, that period beginning with the date the planning authority is notified in writing by Welsh Ministers as being the date that the information specified in paragraph 5 of the Direction was, received.

17. However, paragraph 7 of the Direction permits the authority to proceed to determine the application before the expiry of the 21 day period in circumstances where the authority have received notification in writing that the Welsh Ministers do not intend to call in, or do not consider the development to be petroleum or coal development.

MONITORING AND REVIEW

18. The Welsh Government will closely monitor the number of applications that are referred to the Welsh Ministers resulting from this notification requirement, and the numbers of applications that are consequently called in. Its effect will be reviewed when the new Direction has been operating for an appropriate period of time.

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Economy, Skills and Natural Environment

Annex 1 The Direction: