

Number: WG26011



Llywodraeth Cymru
Welsh Government

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Consultation – summary of responses

Further secondary legislation for development management

Date of issue: January 2016

Overview

This document outlines a summary of the responses to the consultation on proposals to amend the development management system in Wales, in relation to:

- statutory consultees
- Design and Access Statements
- Houses in Multiple Occupation.

The consultation was held 3 August 2015 – 26 October 2015.

This summary report is published in electronic form only.

Electronic copies of all consultation responses to this consultation can be found on the Welsh Government website.

<http://gov.wales/consultations/planning/planforsusconsultation>

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1. Introduction

1.1 A consultation exercise on the proposed amendments to the development management system took place, over a 12 week period, between the 3 August and 26 October 2015. This was the second of two consultation papers seeking stakeholders' views on proposed amendments to subordinate legislation related to the development management system. The first consultation paper, issued on the 19 June 2015, covered subordinate legislation necessary to implement the Planning (Wales) Act 2015. This consultation sought views on proposed amendments to subordinate legislation, intended to implement the Positive Planning proposals, using powers available under the Town and Country Planning Act 1990. The issues covered by this consultation were:

- Statutory Consultees;
- Design and Access Statements (DAS); and
- Houses in Multiple Occupation (HMOs).

Statutory Consultees:

Amendments to Schedule 4 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO)

1.2 Discussions with statutory consultees have suggested that consultation thresholds should be amended in respect of four bodies, so that the consultation requests they receive better reflect their available skills and expertise. We therefore proposed amended consultation thresholds in Schedule 4 of the DMPWO.

1.3 Water and sewerage undertakers (WASU) operating in Wales are becoming new statutory consultees and so relevant consultation thresholds were proposed for inclusion in Schedule 4 of the DMPWO.

Design and Access Statements:

Amendments to Article 7 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012

1.4 We want to reduce the number of planning applications which require a DAS and to make DAS requirements less prescriptive, in order to help streamline the planning process.

1.5 We therefore propose to amend the DMPWO to require DAS with planning applications for major development only. However we also propose to apply a lower threshold in conservation areas and World Heritage Sites. To encourage a more proportionate approach to DAS, which is responsive to individual development proposals we are also proposing to remove the requirement to explicitly refer to five specific design principles in every DAS.

Houses in Multiple Occupation: Amendments to the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) Order 1995

- 1.6 We propose to amend the Town and Country Planning (Use Classes) Order 1987 by introducing a new use class C4 (houses in multiple occupation occupied by not more than six residents). This proposal would increase the number of new HMOs which require planning permission, allowing local planning authorities the opportunity to consider their impact.
- 1.7 We also propose to amend the Town and Country Planning (General Permitted Development) Order 1995 to give permitted development rights to changes of use from buildings used as small scale HMOs (proposed use class C4), to use as dwellinghouses (use class C3). This is to enable a small HMO to revert to use as a dwellinghouse without requiring planning permission.

2. Details of Responses

- 2.1 All responses have been considered fully in preparing the amendments to the Town and Country Planning (Use Classes) Order 1987, the Town and Country Planning (General Permitted Development) Order 1995 and the DMPWO.
- 2.2 The consultation was circulated to the core stakeholders consultation list held by the Planning Directorate of the Welsh Government. These stakeholders include all local planning authorities in Wales, together with relevant public bodies, businesses, special interest groups, professional bodies and other interest groups. The consultation document was also made publically available on the Welsh Government's website.
- 2.3 In total, 71 consultation responses were received. There were 4 responses from the businesses sector, 15 from local planning authorities, 7 from government agencies, 16 from professional bodies / interest groups, 11 from the voluntary sector and 18 from other groups and individuals. **Annex A** includes a list of all respondents. Copies of the individual consultation responses are available on request.
- 2.4 A summary of the responses to the questions can be seen below. A statistical overview of all responses is available in **Annex B**.

3. Statutory Consultees

Introduction

- 3.1 Discussions with statutory consultees have suggested that consultation thresholds should be amended in respect of four bodies, so that the consultation requests they receive better reflect their available skills and

expertise. We therefore proposed amended consultation thresholds in Schedule 4 of the DMPWO.

- 3.2 WASU operating in Wales are becoming new statutory consultees and so relevant consultation thresholds were proposed for inclusion in Schedule 4 of the DMPWO.

What was the consultation about?

- 3.3 Sections 71(2) and 74(1) of the Town and Country Planning Act 1990 provide the power for the Welsh Ministers via a development order to require local planning authorities to undertake consultation and to prescribe the consultation procedure. This procedure is set out in Article 14 of the DMPWO. Article 14 requires that where development falls within a description listed in Schedule 4, the local planning authority must consult the bodies identified in relation to that description.

- 3.4 The purpose of the consultation process is to ensure local planning authorities obtain representations of key bodies on specialist technical issues, or in relation to particular assets, where an authority may have limited expertise or knowledge.

- 3.5 The statutory consultees set out in Schedule 4 of the DMPWO are:

- Local Planning Authorities
- Community or Town Councils
- The Health and Safety Executive
- The Office for Nuclear Regulation
- The Welsh Ministers
- Railway Network Operators
- The Local Highway Authorities
- Road Concessionaires
- The Coal Authority
- The Natural Resources Body for Wales (now known to the wider public as Natural Resources Wales)
- The Theatres Trust
- The Sports Council for Wales (now known to the wider public as Sport Wales); and
- The British Waterways Board (now known to the wider public as The Canal and Rivers Trust)

Why are we proposing change?

- 3.6 Many statutory consultees are experts in their field and may hold knowledge that local planning authorities do not have access to, either because they do not have an internal expert or because it relates to an asset controlled by the consultee. Failure by consultees to provide a timely or clear response can therefore cause delay in the planning system as local planning authorities may not be able to make an

informed decision without it. Furthermore, local planning authorities are under threat of legal challenge if they make a procedural error in their determination by not considering all material considerations.

- 3.7 It has been documented that statutory consultation does on occasion cause delay and frustration in the planning system in Wales. The Independent Advisory Group report (2012) criticised statutory consultees for providing late and disproportionate responses to consultations.
- 3.8 Our consideration of the evidence has resulted in a suite of legislative reforms to refine the interaction of statutory consultees with the planning system in Wales. Sections 18 and 37 of the Planning (Wales) Act 2015, together with the commencement of Section 54 of the Planning and Compulsory Purchase Act 2004, will deliver improvements to the statutory consultation process at pre-application, application, and post application stages. The legislation makes provision for the Welsh Ministers to:
- define a substantive response which statutory consultees must provide following a consultation request under S100A of the Town and Country Planning Act 1990;
 - set the timescale within which a response should be made; and
 - provide for an annual report by statutory consultees on their performance in complying with the duties imposed on them.
- 3.9 Also, in light of the evidence, the Minister for Natural Resources gave a commitment to the Senedd (at the plenary debate on the Planning (Wales) Bill held on 10th February 2015) to make WASU operating in Wales statutory consultees. To give effect to that commitment it is proposed to add them to Schedule 4 of the DMPWO with appropriate consultation thresholds.

What were the main changes proposed?

- 3.10 The amendment to Schedule 4 of the DMPWO would encourage statutory consultees to provide timely and proportionate consultation responses by allowing them to better focus resources. This would result in a more efficient planning system as the change is expected to result in behavioural change on the part of statutory consultees.
- 3.11 Following on from early consultation work in 2010, discussions with existing statutory consultees suggested that four of the bodies sought amendment to the current consultation thresholds in Schedule 4. The amendments are intended to either increase or decrease the number of applications referred to each consultee. In some instances the amendment to the DMPWO results in fewer consultations with a statutory consultee and thus allows them to redirect resources to focus on high priority planning applications. The provision of standing advice for lower risk proposals will ensure that local planning authorities are still able to make informed decisions.

3.12 Alternatively, some bodies will have an amended consultation threshold to attain input on a greater range of applications. This may be due to a change in their role or remit, or the lack of clarity of the existing threshold definitions to inform local planning authorities on when to consult.

Next Steps

3.13 This Consultation Summary Report is published alongside the making and laying of the Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016, which amends Schedule 4 in accordance with the Welsh Government's response set out below.

Summary of Respondents Key Themes / Issues

- General support to the proposed amendments to Schedule 4 of the DMPWO.
- Some concerns were raised regarding some of the proposed thresholds. Suggestions were made by different respondents to raise or lower these in specific cases.
- Concern that some lowered thresholds would not 'catch' certain forms of development.
- Concern that some raised thresholds would capture too much of certain forms of development that were deemed not to be appropriate.
- Additional bodies were suggested for inclusion on the list of statutory or non-statutory consultees.
- The Coal Authority – Overwhelming support for the proposed amended threshold that will reduce consultation on low risk proposals.
- The Welsh Ministers (Cadw) – Overall support for the proposed expanded thresholds. However, there were many questions requesting further clarification and these are addressed in this report.
- Theatres Trust – Overall support for the proposed thresholds for the Theatres Trust that will ensure full consultation by local planning authorities.
- Natural Resources Wales – Overall support for the removal of the two waste and fish farming thresholds and the introduction of a new flood risk threshold.

- Water and Sewerage Undertakers – Overall support for the proposed new thresholds for WASU. However, many local planning authorities questioned the rationale behind some thresholds resulting in post-consultation amendments.

Statistical Breakdown and Overview of the Responses to Each Question

3.14 A summary of the key findings under each consultation question is set out below. This section provides a detailed summary and analysis of the key themes generated for each question followed by the Welsh Government's response.

Question 1:

Do you agree with the proposal to amend paragraph (i)?

The Coal Authority

Question 1	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	4	10	4	5	3	0	26	78.8
Yes with further comment	0	3	0	3	0	0	6	18.2
No	0	1	0	0	0	0	1	3.0

Statistical Review

3.15 A comprehensive majority of respondents support the proposed amendment to paragraph (i).

Overview

3.16 Two local planning authorities who agreed with the proposal requested further clarification with regard to the definition of 'householder development'.

3.17 One local planning authority requested further guidance on when to consult the Coal Authority when a site partly covers both high and low risk coal mining areas.

3.18 The one local planning authority to oppose the proposal claimed (but provided no evidence in support) that the amended definition could increase the number of applications received by the Coal Authority therefore slowing down the processing of applications.

Welsh Government Response

3.19 Overall 97% of respondents supported the new threshold that reflects the Coal Authority's risk based approach to development management where only development in high risk areas from coal mining legacy require direct consultation.

3.20 Low risk development is currently filtered out by local planning authorities through an exemptions list and standing advice and this amendment brings the DMPWO in line with this approach.

3.21 A definition of 'householder development' will be inserted into the DMPWO to assist local planning authorities in determining whether a consultation threshold is triggered.

3.22 For the purpose of the amended DMPWO paragraph (j)* will be amended as follows;

(j)	Development, other than householder development, within an area which has been notified for the purpose of this provision to the local planning authority by the Coal Authority because of the presence of land instability risks from coal mining	The Coal Authority
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*following the consultation paragraph (i) has been amended to (j).

Question 2:

Do you agree with the proposal to amend paragraph (k)?

The Welsh Ministers (Cadw)

Question 2	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	4	5	3	2	3	1	18	48.6
Yes with further comment	1	6	1	5	1	0	14	37.8
No	0	4	0	1	0	0	5	13.5

Statistical Review

3.23 86.4% of respondents agreed with the proposed amendments to paragraph (k). The largest groups agreeing with the proposals were businesses, public bodies and voluntary groups. 13.5% of respondents

opposed the amendments, the majority of which were local planning authorities.

Overview

- 3.24 The responses received from local planning authorities were varied in that some appreciated the further clarification afforded by the proposed thresholds and those who found them too prescriptive.
- 3.25 One local planning authority cited threshold (i) as being too specific. A professional body also questioned the need for additional threshold criteria for scheduled monuments as they already enjoy protection under the Ancient Monuments and Archaeological Areas Act 1979.
- 3.26 Threshold (ii) received the most comments in questioning the rationale behind the wording 'development likely to be visible from a scheduled monument and meets one of the following criteria (a-e)'. Both business and local planning authority interests warned that, in validating an application, local planning authorities would take a pre-cautionary approach and consult Cadw automatically. This was because site visits are not conducted at the planning application validation stage. Possible delays to the processing of planning applications and an increase in consultations to Cadw were cited as consequences to the proposals.
- 3.27 With regard to threshold (iii) one professional interest group submitted comments on the registration of historic parks and gardens being a voluntary act and that a review of the register should be commenced. Another professional interest group has referenced proposals from the Historic Environment (Wales) Bill and the role of a 'nominated amenity society' that is interlinked with the proposals for paragraph (k).
- 3.28 One local planning authority recommended the addition of proposals on 'land adjacent' to a registered historic landscape that requires an Environmental Impact Assessment in threshold (iv).
- 3.29 Two professional bodies provided general comments relating to the lack of clarity provided by the term 'development likely' thresholds (iii) and (v). Another professional body questioned why the setting of a scheduled monument is not included or views defined as important in development plans.

Welsh Government Response

- 3.30 The Welsh Government's Planning Directorate is aware of the new duties anticipated to be placed on Cadw from the Historic Environment (Wales) Bill (currently being scrutinised by the Assembly), and the need therefore to provide clarity of the trigger for consultation. 48.8% of respondents supported the proposals and a further 37.8% supported them subject to further comments.

- 3.31 The role of the Ancient Monuments and Archaeological Areas Act 1979 and the supporting Schedule of Ancient Monuments as primary legislation is acknowledged. To support this legislation, threshold (i) is considered important from a land use planning perspective in preventing harmful or unlawful development to scheduled monuments where developers are either negligent or ignorant.
- 3.32 Threshold (ii) was the subject of many responses, particularly from local planning authorities, that questioned the prescriptive nature of the proposal. However it was noted that some local planning authorities supported the threshold as it provides more clarity than the existing threshold.
- 3.33 Another area of concern from some local planning authorities was that the wording 'likely to be visible from' may lead the precautionary principle being applied to consultations to Cadw. It is acknowledged that local planning authorities will not conduct a site visit at the validation stage of a planning application. However, it is considered that the wording does offer local planning authorities the discretion not to consult Cadw if it is obvious that a proposal will not be visible from a scheduled monument. For example, Cadw would not need to be consulted on development that is completely screened from the scheduled monument by the topography of the landscape, existing buildings, dense vegetation or tree coverage.
- 3.34 To support local planning authorities in applying the proposed thresholds existing guidance measures are in place. This includes an archaeological assessment that requires applicants to assess potential impact on a scheduled monument and GIS mapping layers provided by Cadw to support a desk based assessment.
- 3.35 With regard to the proposed threshold (iii), the Explanatory Memorandum accompanying the Historic Environment (Wales) Bill has identified that the intention of introducing the new statutory status of the Register of Historic Parks and Gardens will not result in additional legal restrictions on historic parks and gardens or introduce a new consent regime. Registered sites will continue to receive the current level of protection through the town and country planning system.
- 3.36 Following discussions between Cadw and the Welsh Historic Gardens Trust we understand that the Trust is not currently sufficiently resourced to be able to provide the high level service required of a national amenity society across Wales. It is therefore in this context that Cadw is proposing to provide the necessary specialist advice on all planning applications affecting registered historic parks and gardens. We will however keep under review the option of a nominated amenity society being used in future to provide advice on all planning applications affecting registered parks and gardens.

3.37 Thresholds (iii, iv & v) reflect Cadw's risk based approach to development management and consequently there will be no amendments to the wording from that set out in the consultation paper. Comments were received as to whether battlefields, marine sites and conservation areas should be included within Cadw's remit. However, these matters are covered by other legislation and are not a subject of the consultation paper.

3.38 For the purpose of the amended DMPWO paragraph (l)* will be amended as follows;

(l)	<ul style="list-style-type: none"> (i) Development which has a direct physical impact on a scheduled monument. (ii) Development likely to be visible from a scheduled monument and which meets one of the following criteria-- <ul style="list-style-type: none"> a) it is within a distance of 0.5 kilometres from any point of the perimeter of a scheduled monument; b) it is within a distance of 1 kilometre from the perimeter of a scheduled monument and is 15 metres or more in height, or has an area of 0.2 hectares or more; c) it is within a distance of 2 kilometres from the perimeter of a scheduled monument and is 50 metres or more in height, or has an area of 0.5 hectares or more; d) it is within a distance of 3 kilometres from the perimeter of a scheduled monument and is 75 metres or more in height, or has an area of 1 hectare or more; or e) it is within a distance of 5 kilometres from the perimeter of a scheduled monument and is 100 metres or more in height, or has an area of 1 hectare or more. (iii) Development likely to affect the site of a registered historic park or garden** or its setting; (iv) Development within a registered historic landscape that requires an Environmental Impact Assessment; or (v) Development likely to have an impact on the outstanding universal value of a World Heritage Site 	The Welsh Ministers
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*following the consultation paragraph (k) has been amended to (l).

**Threshold (iii) has been subject to a minor amendment whereby the proposed wording 'classified as Grade I, II* and II' has been removed from the registered historic park or garden classifications. This terminology derives

from the Historic Environment Bill which is yet to receive Royal Assent. It is considered to re-insert the wording in a future consolidation following the coming into force of the Historic Environment Act.

Question 3:

Do you agree with the proposal to amend paragraph (r)?

The Theatres Trust

Question 3	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	3	5	4	5	2	1	20	57.1
Yes with further comment	1	6	0	1	1	0	9	25.7
No	0	4	0	2	0	0	6	17.1

Statistical Review

3.39 Overall, respondents agreed (82.8%) with the proposal to amend paragraph (r). The 17.1% of respondents that opposed the amendments were made up of four local planning authorities and three professional interest groups.

Overview

3.40 Comments to this proposal centred on threshold (ii) and the requirement to consult the Theatres Trust where residential development is proposed within 50m of a theatre. The general theme being that the threshold is inflexible and that noise considerations for residential proposals are already covered by other environmental health and building regulations.

3.41 Clarification was also requested as to where the 50m is measured from (building or curtilage). Definition of a theatre was requested to be clarified as to whether it includes all theatres, historic, contemporary and new, including in current use or disused.

Welsh Government Response

3.42 The majority of respondents agreed with the new proposed thresholds for the Theatres Trust that will ensure appropriate consultation by local planning authorities. The purpose of threshold (ii) has been reviewed in light of the consultation comments questioning its purpose. However, it is considered that the threshold is important in fully assessing potential noise impact on proposed residential development from a land use planning perspective. The protection afforded by other noise protection regulation is aimed more at protecting the occupiers of the new

development, which could result in the theatre having to pay for mitigation measures post development despite them being there first. Therefore this threshold will ensure that the need for mitigation can be considered as part of assessing the design approach when applications are made.

3.43 For the purpose of clarification in paragraph (r), theatre has the same meaning as in section 5 of the Theatres Trust Act 1976 ‘any building or part of a building constructed wholly or mainly for the public performance of plays’.

3.44 It is intended that the 50m will be measured from the theatre building.

3.45 For the purpose of the amended DMPWO paragraph (r) will be amended as follows;

(r)	Development involving – (i) any land on which there is a theatre; (ii) residential development (excluding householder development) within 50 metres of a theatre (not falling within paragraph (i)); or (iii) a proposed theatre.	The Theatres Trust
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Question 4:

Do you agree with the proposed changes as set out in Table 4:

- a) To remove paragraph (n)?
- b) To remove paragraph (u)?
- c) To add paragraph (y) to NRW's statutory consultation requirements?

Natural Resources Wales (NRW)

Question 4	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	3	8	4	5	4	0	24	75.0
Yes with further comment	1	4	0	0	0	0	5	15.6
No	0	2	0	1	0	0	3	9.4

Statistical Review

3.46 Three quarters of respondents agreed outright with the proposed amendments to NRW's threshold criteria. Less than 10% opposed

certain elements of the proposed amendments and were made up of two local planning authorities and one professional interest group.

Overview

3.47 Comments from respondents indicated support for the introduction of the new flood risk threshold. The local planning authority and business respondent concerns were focussed on the proposed removal of paragraph (n). Specifically, NRW would not be provided with the opportunity to comment on small sites that would not meet the Environmental Impact Assessment thresholds.

Welsh Government Response

3.48 The consultation paper reviewed the existing legacy consultation thresholds following the formation of NRW where the functions of the Countryside Council for Wales, Environment Agency Wales and Forestry Commission Wales were unified under one body in April 2013.

3.49 The Welsh Government is keen to reduce unnecessary consultation in the planning application process. The majority of local planning authority respondents supported the proposals, recognising the benefits of reducing the burden on NRW so that their resources can be focussed on other areas of development. Accordingly paragraphs (n) and (u) relating to waste and fish farming respectively will be removed from Schedule 4. NRW will retain its role as a statutory consultee for developments that are subject to EIA.

3.50 There was comprehensive support from all respondents for the new flood risk threshold criteria proposed in paragraph (y). This will serve to formalise the current non statutory consultation that takes place as a result of Technical Advice Note (TAN) 15: Development and Flood Risk.

3.51 For the purpose of the amended DMPWO paragraph (x)* will be introduced as follows;

(x)	Development – (i) on land designated as Flood Zone C2; (ii) involving or including emergency services development or highly vulnerable development on land designated as Flood Zone C1 or on land that has been notified to the local planning authority by the Natural Resources Body for Wales for the purpose of this provision.	The Natural Resources Body for Wales
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*following the consultation paragraph (y) has been amended to (x).

Question 5:

Do you agree with the proposed new consultation thresholds for WASU identified in Table 5?

Water and Sewerage Undertakers

Question 5	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	3	5	4	5	3	0	20	58.8
Yes with further comment	2	8	0	1	1	0	12	35.3
No	0	2	0	0	0	0	2	5.9

Statistical Review

3.52 Just fewer than 60% of respondents agreed with the new proposed thresholds for water and sewerage undertakers. Two local planning authorities opposed certain elements of the new thresholds which are reflected in 5.9% of the final statistics.

Overview

3.53 In response to criteria (i) some respondents suggested that the threshold be raised from single units to a higher level such as five units or set at the major development threshold. This was to make the requirement to consult WASU less onerous.

3.54 A large proportion of local planning authority respondents challenged the rationale behind criteria (iii) regarding development not in accordance with the development plan and (iv) involving the use of land for the provision of renewable energy.

Welsh Government Response

3.55 Welsh Government has further reviewed the requirements for the proposed WASU threshold (iii) and (iv) following responses received to the consultation paper. Threshold (iii) is not considered to be necessary in Schedule 4 as the likelihood is that most development coming forward on windfall sites, or not in accordance with plan allocations, will fall within threshold i) or ii), and trigger a requirement to consult. The renewable energy threshold (iv) is not deemed necessary as the type and scale of such developments that WASU have requested to be consulted on will be captured under threshold (ii).

3.56 With regard to threshold (i) further consideration has been given to the number of residential units that will trigger a consultation. However, it is

considered prudent to retain the single unit level as such developments can potentially compromise WASU infrastructure as much as major applications.

3.57 Accordingly, thresholds (i) and (ii) are considered to sufficiently cover WASU interests and paragraph (y)* will be introduced into the DMPWO as follows;

(y)	Development— (i) involving new residential development (including single units); and (ii) which is major development not falling within paragraph (i).	The water and sewerage undertaker concerned
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*following the consultation paragraph (z) has been amended to (y).

3.58 For the purpose of the amended DMPWO paragraph (p) will be amended as follows;

(p)	Development relating to the use of land as a cemetery	The Natural Resources Body for Wales The water and sewerage undertaker concerned
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Question 6:

Are there any other thresholds that should be included in/or excluded from Schedule 4 of the DMPWO? If so, please identify these and explain why they should be included or excluded.

Question 6	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	0	3	3	4	1	0	11	37.9
Yes with further comment	0	2	0	0	2	0	4	13.8
No	3	10	1	0	0	0	14	48.3

Newydd HA

3.59 *“Should the Aviation Authority be included where development is in proximity to an airfield or which sits within an Aviation Zone?”*

3.60 Circular 01/2003 Safeguarding Aerodromes, Technical Sites and Military Explosive Storage Areas sets out the statutory requirement to consult

with either the Civil Aviation Authority, Airport Operator, or Ministry of Defence where applications are received within an aviation safeguarding zone.

Flintshire County Council

- 3.61 *“Consideration should be given to the inclusion of the Local Health Board as a statutory consultee on major residential applications, say over 100 dwellings. Our experience is of pressures being placed on local GP practices and other Health services where they are already at capacity. On some larger schemes we have sought additional provision from the developer but recognising the Health Board, a key stakeholder, as a statutory consultee, would impose the need to take such issues into consideration in the determination of planning applications”.*
- 3.62 As part of the local development plan process local service providers such as health boards should be consulted by local planning authorities regarding any additional needs that they may have, and also to consider any representations that they make regarding the potential impact from new development allocations. It is considered that the more strategic plan led approach is the most appropriate level to consider health needs across a local authority area, rather than in a piecemeal fashion as and when planning applications are submitted.
- 3.63 *“It might also be time to review the status of the "local highway authority concerned", which dates from the time when County Councils were the highway authority.*
- 3.64 *Apart from the National Parks planning and highway responsibilities lie within the same authority and in some cases within the same service area. This close working arrangement ensures that the highway input is an integral part of the planning process and preserving the statutory consultee status is slightly anomalous”.*
- 3.65 As National Parks are not Unitary Authorities the requirement remains for them to consult the local highway authority concerned. Therefore it is not appropriate to remove reference to the local highway authority concerned.

Community Housing Cymru Group

- 3.66 *“The requirement to consult the NRW on development within 250 metres of land which, over the previous 30 years has been used for the Deposit of Waste (t) is questioned.*
- 3.67 *As Special Waste Regulations were introduced in 1974, over the past 41 years former landfill sites would have been properly licensed and monitored in respect of hazardous substances. A threshold of 150 metres is therefore considered more reasonable”.*

3.68 This will be considered in the future and we will work with NRW to consider options.

Merthyr & POSW

3.69 *“Proximity to the national grid”*

3.70 A response on this matter is outlined in the Information report ‘List of Statutory and Non-Statutory Consultees in the Planning Application Process’ published in September 2011.

HBF

3.71 *“The HBF contend that the current threshold for major housing developments of 10 units or above is too low and should be amended/increased to 30 units or 2ha. This would help to reduce the regulatory burden on smaller developers and should help to increase the number of small builders operating in Wales, something which should be encouraged at a time when we need so many houses to be built to help solve the housing crisis”.*

3.72 This has been noted by Welsh Government’s Planning Directorate. However this aspect does not form part of this consultation, and therefore will be considered as appropriate at a later date.

Question 16:

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Design out Crime Group Wales (DOCGW) which represents Designing out Crime Officers from the four Welsh Police Forces;

- I. North Wales Police**
- II. South Wales Police**
- III. Association of Chief Police Officers Wales/Cymru (Chief Constable Mark Polin)**

3.73 *“Police Forces in Wales do not wish to be statutory consultees but would wish to be placed on list of non-statutory consultees in respect of any new Welsh Planning Legislation to ensure that the legal responsibilities for police and local authorities to prevent crime under section 17 of the Crime and Disorder (C&D) Act 1988 are properly discharged”.*

3.74 Police Architectural Liaison Officers (Now known as Police Crime Prevention Design Advisors) are already placed on the list of non-statutory consultees. This is outlined in the Information report ‘List of Statutory and Non-Statutory Consultees in the Planning Application Process’ published in September 2011. Your details have also been added to the Welsh Government legislative consultation database.

Bridgend CBC

- 3.75 *“In light of Regulation 9 and the potential risk of having to refund planning application fees (as well as the additional workload and duties to be placed on Cadw and NRW etc.) the WG should allow LPAs to assume that a statutory consultee does not have any comments to make on an application if no response is received within the 21 day consultation period”.*
- 3.76 The legislation precludes a local planning authority from making a determination until a period of 21 days has expired from the date of a valid application being received in order to ensure that statutory consultees have sufficient time to respond, or to agree an extension of time with the local planning authority. There is nothing in the regulations that prevents a local planning authority from taking a decision on an application after this time has expired based upon the information before them at that time.

4. Design and Access Statements

What was the consultation about?

- 4.1 Planning Policy Wales (PPW)¹ sets out our national planning policy in respect of promoting sustainability through good design and planning for sustainable buildings, and explains the role of local planning authorities in delivering good sustainable design. This is supported by Technical Advice Note (TAN) 12: Design² which provides advice for all those involved in the development process on how good sustainable design can be facilitated through the planning system.
- 4.2 DAS were introduced in 2009 as a communication tool to explain how both good and inclusive design principles have been considered and applied from the outset of the development process and how they will be achieved.
- 4.3 However, the GVA Report into the Planning Application Process in Wales (June 2010)³ highlighted key criticisms of DAS, such as perceptions regarding the process and additional costs, and recommended that the scope and content of DAS should be clarified in order to speed up and improve the validation of planning applications.

¹ <http://gov.wales/topics/planning/policy/ppw/?lang=en>

² <http://gov.wales/topics/planning/policy/tans/tan12/?lang=en>

³ <http://gov.wales/topics/planning/planningresearch/planningappprocess/papers/planningappstudy/?lang=en>

- 4.4 The research report by The Urbanists Review of Design and Access Statements in Wales⁴ (2013) makes recommendations for refining and improving the DAS process. The report found that DAS can vary significantly in terms of their quality with the weight attributed to a DAS becoming more significant when justifying proposals for potentially complex sites, both in scale and issues, and those located in more sensitive locations. In other cases DAS were often poor quality, only meeting the minimum requirements of the planning authority. The report stated that the general perception of applicants is that the mandatory requirement for DAS has become a box ticking exercise used for validation purposes, having minimal impact on design quality and inclusive access.

Why are we proposing change?

- 4.5 The Urbanists report indicates a key positive value of DAS is their role as a communication tool for multiple audiences. These include design officers, designing out crime officers, development management officers, access groups, committee members and the public. The research found that DAS have raised the profile of design and inclusive access, and give consistency as to how issues are considered and presented in the planning process.
- 4.6 The nine recommendations of the report set out how legislation, guidance and procedures can be amended to improve the credibility and efficiency of the process. The primary recommendations relating to planning, which would require changes to subordinate legislation, are summarised as follows:
- Retain DAS as a communication tool, but only as a mandatory requirement for applications within certain categories (e.g. listed buildings/designations) and above certain dwelling/size thresholds (e.g. over 10 dwellings)
 - Exclude from the requirements the specific aspects of a development that must be considered (i.e. access, environmental sustainability, movement, community safety and character).

What were the main changes proposed?

- 4.7 We made proposals to simplify and streamline the current legal requirements for DAS by making amendments to the DMPWO in relation to the specified descriptions of applications for planning permission where DAS are required and in relation to their content.
- 4.8 We proposed to amend the DMPWO to only require DAS with planning applications for major development. Additionally, in conservation areas

⁴ <http://gov.wales/topics/planning/planningresearch/publishedresearch/review-of-design-and-access-statements-in-wales/?lang=en>

and World Heritage Sites, we proposed that the threshold for DAS would be the provision of: one or more dwellinghouses; or the development of a building or buildings where the floor space created by the development is 100 square metres or more.

4.9 To encourage a more proportionate approach to DAS, which are responsive to the individual development proposals, we also proposed to make the following changes to the statutorily prescribed content of DAS:

- remove the requirement to explain the specific design principles that have been applied to “environmental sustainability”, “movement to, from and within the development”, “character” and “community safety”;
- remove the requirement to give details concerning maintenance in respect of access features; and
- reduce the number of statutory definitions in respect of DAS.

4.10 In addition to specific questions on the form and content of DAS, we also asked questions to inform the Welsh Government’s consideration of issues relating to the Historic Environment (Wales) Bill. Proposals include the introduction of Heritage Impact Assessments (HIAs) to accompany applications for Listed Building Consent, Conservation Area Consent and Scheduled Monument Consent.

Next Steps

4.11 This Consultation Summary Report is published alongside the revisions to the DMPWO.

Summary of the Key Themes / Issues

4.12 From the analysis of the consultation responses the following key themes / issues have been derived:

- General support for the proposed changes to the thresholds for DAS.
- Some concerns were raised regarding the proposed thresholds. Suggestions were made by different respondents to raise and lower these.
- Alternative proposals were suggested based on the use of the development rather than the size of the scheme.
- The lowered threshold should include National Parks, Areas of Outstanding Natural Beauty, historic parks and gardens and other designated landscapes.
- Concern that the lowered threshold would not ‘catch’ certain forms of development.

- The need for HIAs should be proportionate to the type and scale of development.
- HIAs should be accompanied by a statement on access where access was directly material to the proposal.
- General support for the proposal to simplify the statutory content of DAS. However, some respondents were concerned about the removal of reference to the objectives of good design from legislation.

Statistical Breakdown and Overview of the Responses to Each Question

4.13 A summary of the key findings under each consultation question is set out below. This section provides a detailed summary and analysis of the key themes generated for each question followed by the Welsh Government's response.

Question 7:

Do you think that major development as described under c, d and e of paragraph 3.19 and the DMPWO is the right threshold for requiring a Design and Access Statement? If not, what would be an appropriate threshold?

Question 7	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	2	11	1	9	4	0	27	52.9
Yes with further comment	3	4	1	2	1	1	12	23.5
No	1	0	1	2	7	1	12	23.5

Statistical Review

4.14 Over half of all respondents agreed with our proposal to require DAS for major development proposals only. The largest groups agreeing with the proposals were local planning authorities and professional bodies or interest groups. Just under a quarter of respondents did not agree with the proposals, the largest category of these were from the voluntary sector which included access groups.

Overview

4.15 The majority of respondents supporting the proposal commented on the need to focus DAS to the more significant applications where they can

add value to the process and be used effectively to communicate the design principles which informed the design of a scheme. They considered that this would streamline the planning process for smaller applications where validation of applications without a DAS was seen as a barrier.

- 4.16 Some respondents suggested larger and smaller thresholds ranging from five dwellings up to more than 31. Others suggested that the basis for requiring a DAS should relate to the type of development rather than on just its size as this was considered to be a key factor, particularly in terms of access arrangements. Reassurances were requested that local planning authorities would still be able to request design information on smaller schemes in order to determine the appropriateness of proposals.
- 4.17 Those against the proposal considered that DAS should be required for all developments as the effects of poorly-designed smaller developments would have a greater impact in some areas. Access Groups in particular were concerned about how it would be communicated (and ensured) that access issues had been considered and that disabled people would be able to navigate new developments safely.

Welsh Government Response

- 4.18 The definition of major development is considered, on balance, to be the most appropriate threshold for DAS as it is already defined elsewhere in the DMPWO. The introduction of this threshold would match the DAS requirements currently in place in England, Scotland and Northern Ireland. This threshold was recommended by The Urbanists Review of Design and Access Statements in Wales and by the Environment and Sustainability Committee of the National Assembly for Wales in their recommendations on the Planning (Wales) Act 2015.
- 4.19 Those development proposals no longer covered by the DAS requirements will still be subject to national design policies contained in PPW and TAN12. Local policies in LDPs will still outline local design requirements and local planning authorities will still be able to request design information on a case-by-case basis where it is justifiable in order to be able to assess an application. This flexible approach is preferred over a blanket requirement for DAS on all minor applications.
- 4.20 In terms of access, the Equality Act 2010 will continue to require reasonable adjustments to be made in relation to accessibility and in practice this means that due regard must be given to any specific needs of likely building users that might be reasonably met in the design considerations of a scheme. We are also considering a future review of Part M of the Building Regulations on our requirements of access arrangements within new developments.
- 4.21 Given the above, it is considered reasonable to proceed with our original proposals on when a DAS will be required to accompany a planning

application. TAN 12 will be factually updated to reflect these changes, but the overall policy commitment to achieving good design within the planning system remains unchanged.

Question 8

Do you agree with our proposals to have different thresholds in Conservation Areas and World Heritage Sites? If not, to what other sensitive areas, if any, should a smaller threshold apply?

Question 8	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	5	10	2	4	7	2	30	68.2
Yes with further comment	1	4	0	5	2	0	12	27.3
No	0	1	0	1	0	0	2	4.5

Statistical Review

4.22 There was large support for our proposal of lower thresholds in conservation areas and World Heritage Sites. Approximately 70% of all respondents stated their full support for the proposal, while a large majority of the remaining respondents stated their support but with additional comments. Only two respondents disagreed with the proposal.

Overview

4.23 Comments relating to this proposal suggested that the lowered threshold should include National Parks, Areas of Outstanding Natural Beauty, historic parks and gardens and other designated landscapes. Comments also sought clarity as to why alterations to listed buildings and development within their curtilage are not in the threshold.

Welsh Government Response

4.24 While recognising that National Parks, Areas of Outstanding Natural Beauty, historic parks and gardens and other designated landscapes are sensitive to development we do not consider it necessary to lower the threshold for these areas as the spirit of this consultation is to ensure a consistent and proportionate approach across Wales which is efficient and streamline in nature. Local policies in LDPs will still outline local design requirements and local planning authorities will still be able to designate areas and request design information on a case-by-case basis where it is justifiable in order to be able to assess an application.

Question 9

Do you agree with our proposed threshold for Design and Access Statements in these sensitive areas? If not, what would be an appropriate threshold?

Question 9	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	4	12	1	5	7	2	31	77.5
Yes with further comment	1	2	0	3	1	0	7	17.5
No	0	1	0	1	0	0	2	5

Statistical Review

4.25 There was large support for the proposed threshold for DAS in conservation areas and World Heritage Sites. Approximately 80% of all respondents stated their full support for the proposal, while a large majority of the remaining respondents stated their support but with additional comments. Only two respondents disagreed with the proposal.

Overview

4.26 Comments relating to the particulars of the threshold raised concern that it would not 'catch' certain smaller forms of development. There was also concern about development that could be seen from the setting of conservation areas and World Heritage Sites.

Welsh Government Response

4.27 We recognise that developments of all scales have the potential to have an impact on a variety of other areas which are recognised as important for many different reasons. However, the decision-making framework against which applications for such development are assessed is not altered by removing the statutory requirement to provide a DAS. Specific planning policies will continue to apply to these areas, which will need to be taken into account by decision makers. Applications for Listed Building Consent will continue to require a DAS until consideration has been given to an alternative approach through the Historic Environment (Wales) Bill.

Question 10

Do you agree with the proposal to incorporate the requirement for a statement on design within an HIA when preparing an application for listed building, scheduled monument or conservation area consent?

Question 10	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	4	7	0	4	6	3	24	57.1
Yes with further comment	1	8	0	5	3	0	17	40.5
No	0	0	1	0	0	0	1	2.4

Statistical Review

4.28 There were 42 responses to this question: 41 were in general agreement, 19 of which offered no further comment. Only one respondent disagreed, and even this response was qualified with constructive comments.

Overview

4.29 Where comments were provided, two main points were emphasised: the need for HIAs to be proportionate to the type and scale of development, and the need to ensure that issues of design are adequately addressed in a HIA by the inclusion of a specific statement on design.

4.30 One respondent expressed concern about the relationship between applications for planning permission and applications for Listed Building Consent, questioning why planning applications involving listed buildings were excluded. Another made the point that related planning applications shouldn't require a DAS – HIA should be instead of, rather than as well as DAS.

4.31 Two respondents suggested that HIAs should be extended to historic parks and gardens, and there were also two suggestions that HIAs should be required for the majority of developments within conservation areas and World Heritage Sites.

Welsh Government Response

4.32 Guidance on the use of HIA, which will be issued for consultation during 2016, will address the two substantial points raised in this consultation – proportionality and the adequate inclusion of design matters within the scope of the HIA.

Question 11

What do you consider should be the circumstances in which an HIA would also need to be accompanied by a statement on access?

Statistical Review

4.33 There were 34 responses to this question, offering comment and suggestions.

Overview

4.34 Responses included quite a broad range of comment, but the strongest theme to emerge was that an access statement should be required in circumstances involving a change of use – variously qualified as changes of use requiring planning permission, or involving access for employees or the provision of a public service, or increasing the level of an existing use. Several respondents suggested that an access statement should only be required where access was directly material to the proposal, for example where specific changes to access arrangements were proposed, or where access was likely to have an impact on the asset itself. Two respondents considered that an access statement should be provided in all circumstances.

Welsh Government Response

4.35 Guidance on the use of HIAs, which will be issued for consultation in 2016, will clarify the circumstances in which access would need to be addressed within the HIA.

Question 12

Do you agree with our proposals to simplify the statutory content of Design and Access Statements?

Question 12	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	4	10	1	4	4	0	23	48.9
Yes with further comment	2	3	1	5	1	0	12	25.5
No	0	2	1	4	5	0	12	25.5

Statistical Review

4.36 A significant majority of respondents agreed with the proposal to simplify the statutory content of DAS. In particular, most local planning

authorities and respondents from the business sector agreed with the proposal. Responses from public bodies, professional bodies/interest groups and voluntary groups were more mixed.

Overview

- 4.37 Simplifying the statutory content of DAS was largely supported on the basis that it would enable their content to be proportionate, relevant and meaningful. In particular, it was suggested that it would enable DAS to focus on the design issues relevant to the application and address the current 'tick-box' attitude to the process.
- 4.38 A number of respondents were concerned that taking specific reference to the objectives of good design out of legislation would result in them being given less weight and being overlooked by applicants and local planning authorities. Different stakeholders were concerned about the removal of reference to different aspects of design.
- 4.39 Respondents agreed that planning applications should be validated if the DAS does not make reference to all the objectives of good design. However, a number of respondents highlighted that the changes had the potential to result in an inconsistent approach being taken by local planning authorities, resulting in validation problems and delays to the determination of planning application. These respondents suggested that guidance would be required to ensure consistency and prevent these potential problems.
- 4.40 It was suggested that DAS should be more succinct and visual. It was also suggested that DAS should provide a rational process of context analysis. One respondent suggested that Part M of the Building Regulations should be expanded to give guidance on quality of access to all external areas and in sensitive historic areas.

Welsh Government Response

- 4.41 Given the weight of support for the proposal, it is considered appropriate to simplify the statutory content of DAS.
- 4.42 The Urbanists, in their report Review of Design and Access Statements in Wales, recommended the proposed amendment in order to address the problems they identified of DAS being seen as a box-ticking exercise and often containing irrelevant and unnecessary information.
- 4.43 National planning policy and guidance on design, contained within PPW and TAN 12, will continue to be structured around the five objectives of good design. We will update our guidance to set out our expectation that, where relevant to the development being proposed, these issues should be addressed in a DAS. We are also introducing

measures to frontload the planning system, which will provide the opportunity for the content of DAS to be agreed during pre-application discussions.

- 4.44 Further guidance will be provided on DAS to help create consistency. The guidance will also seek to improve the content of DAS, with a focus on them being succinct, proportionate and visual.
- 4.45 We are currently working with the Design Commission for Wales on the production of guidance on undertaking site and context analysis. The guidance will help applicants develop proposals that take their context into account, and communicate this in a planning application through a DAS. The guide will also help local planning authorities in:
- Reviewing DAS;
 - Informing pre-application discussions;
 - Assessing planning applications;
 - Preparing design policies in LDPs; and
 - Developing area and site specific supplementary planning guidance (such as urban design frameworks and masterplans).
- 4.46 We are considering a future review of Part M of the Building Regulations on our requirements of access arrangements within new developments.

Question 16:

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

- 4.47 Comments in relation to DAS have been considered as part of the analysis of the questions above.

5. Houses in Multiple Occupation

- 5.1 The consultation sought views on the Welsh Government's proposed amendments to the Town and Country Planning (Use Classes) Order 1987 which introduces a new use class C4 (houses in multiple occupation occupied by not more than six residents) and the Town and Country Planning (General Permitted Development) Order 1995. This proposal would increase the number of new HMOs which require planning permission, allowing local planning authorities the opportunity to consider their impact.
- 5.2 We also propose to amend the Town and Country Planning (General Permitted Development) Order 1995 to give permitted development rights to changes of use from buildings used as small scale HMOs (proposed use class C4), to use as dwellinghouses (use class C3).

This is to enable a small HMO to revert to use as a dwellinghouse without requiring planning permission.

- 5.3 A total of 3 questions were asked specifically on the main changes in respect of the proposed HMO amendments. However, opportunity was made available for further comments should respondents wish to provide additional observations or expand upon their previous answers.

What was the consultation about?

- 5.4 The Welsh Government recognises that HMOs make an important contribution to the private rented sector by catering for the housing needs of specific groups of people. In particular, HMOs provide accommodation for individuals who cannot afford to purchase properties or rent larger accommodation. These types of property also often house the more vulnerable members of society and provide a valuable source of accommodation in University towns and cities.
- 5.5 However, high concentrations of HMOs can lead to substantial changes and problems in particular locations for the settled communities as the nature of a neighbourhood can change. Issues and problems relating to HMOs can manifest themselves in many different ways, such as increased waste and noise nuisance.
- 5.6 Concerns have been raised about the problems associated with concentrations of HMOs in parts of Wales and their affect on local communities. As a result there have been calls for a change to planning regulations to enable local authorities to more effectively manage the use of properties as HMOs.

Why are we proposing change?

- 5.7 In response to the concerns raised by local communities about the problems caused by high concentrations of HMOs, the Welsh Government commissioned research to examine and quantify the nature of the problems and propose potential solutions. The results of this research were published in May 2015. In addition to examining the extent of concentrations of HMOs in Wales and the issues associated with them, the research reviewed the existing legislation and made recommendations on potential changes.
- 5.8 The research recommended changes to the Town and Country Planning (Use Classes) Order 1987 to enable local authorities to manage future growth of HMO concentrations. Any change to the Use Classes Order would not be retrospective and therefore the research recognised that it would not lead to any immediate change in communities affected by HMO concentrations. However, as indicated, it would mean that a local authority would have the opportunity to manage the future growth of HMOs, both in existing high concentration

areas and to prevent high concentrations occurring in other areas, should it wish to do so.

- 5.9 The research also identified difficulties for local authority officers and property owners arising from the different definitions of an HMO for housing and planning purposes. This can result, for example, in a licence being required for a proposed HMO, but not planning consent.
- 5.10 Regarding the planning system, the main recommendations, which would require changes to secondary legislation, can be summarised as follows:
- Aligning the definition of an HMO for planning purposes with the housing definition set out in section 254 of the Housing Act 2004; and
 - Amending the Town and Country Planning (Use Classes) Order 1987 by introducing a new use class for HMOs to give local authorities in Wales the power to manage the development of HMOs with fewer than seven residents.

What were the main changes proposed?

- 5.11 We are proposing to amend the Town and Country Planning (Use Classes) Order 1987 by introducing a new use class C4 (houses in multiple occupation occupied by not more than six residents). This proposal would increase the number of new HMOs which require planning permission, allowing local planning authorities the opportunity to consider the impacts of proposed new HMOs. Local authorities will be able to adopt local policies to control the density and spread of this type of housing. Planning applications would then be assessed against these local policies allowing local authorities greater control over new HMOs. It will be for individual local planning authorities to consider the balance of costs and benefits in their particular area in deciding whether or not to have local policies.
- 5.12 The position regarding HMOs with seven or more unrelated occupiers will remain unchanged, i.e. they will continue to be considered 'sui generis' (of its own class).
- 5.13 As part of the proposed amendment of the Use Classes Order we propose to align the definition of an HMO with the definition set out in section 254 of the Housing Act 2004. Therefore for the purposes of the proposed Class C4 a "house in multiple occupation" would have the same meaning as in section 254 of the Housing Act 2004, but not including a converted block of flats to which section 257 of the Housing Act 2004 applies.
- 5.14 We are also proposing to amend the Town and Country Planning (General Permitted Development) Order 1995 to give permitted development rights to changes of use from buildings used as small

scale HMOs, proposed use class C4 (houses in multiple occupation occupied by not more than six residents), to use as dwellinghouses, use class C3. This is to enable a small HMO to revert to use as a dwellinghouse without requiring planning permission.

Next Steps

- 5.15 As the overall response to the questions regarding HMOs was in favour of the proposed changes to secondary legislation (see section 8 below), the Welsh Government will be putting them into effect, taking into account any clarifications that are required to address issues raised in response to the consultation exercise.
- 5.16 This Consultation Summary Report is published alongside the revisions to the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) Order 1995.

Summary of the Key Themes / Issues

- 5.17 From the analysis of the consultation responses the following key themes / issues have been derived:
- General support for the proposed introduction of a new use class C4. Proposed change would allow local planning authorities to manage proposals for small HMOs and consider whether they are appropriate in planning terms.
 - Concern that the new use class was open to interpretation and challenge with a need for further guidance to make a clear distinction between use classes C3 and C4.
 - The Welsh Government and local authorities should focus on funding and facilitating community led projects, which would help solve issues related to HMOs such as anti-social behaviour.
 - General support for the proposal to align the planning definition of HMOs with the Housing Act to provide consistency. However the proposal still leaves room for interpretation and challenge.
 - It is not appropriate to use the Housing Act definition for planning purposes given that the Housing Act and planning laws are designed for different regulatory uses.
 - The definition set out in Section 254 of the Housing Act is not particularly clear and further guidance is required to ensure the proposal operates effectively.

- The proposal to enable small HMOs (new use class C4) to revert to use as a dwellinghouse (Class C3) without requiring planning permission was viewed as a sensible approach.

Statistical Breakdown and Overview of the Responses to Each Question

5.18 A summary of the responses under each consultation question is set out below. This section provides a detailed summary and analysis of the key themes generated for each question followed by the Welsh Government's response.

5.19 The total number of respondents for each of the questions varies because not all of the respondents answered every question.

Question 13:

Do you agree that a new use class C4, whereby planning permission will be required for HMOs with fewer than seven residents, should be introduced?

Question 13	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	1	8	1	6	2	10	28	70.0
Yes with further comment	0	5	0	2	1	0	8	20.0
No	0	2	0	1	1	0	4	10.0
Total	1	15	1	9	4	10	40	

Statistical Review

5.20 The majority (90%) of respondents agree with the introduction of a new C4 use class, whereby planning permission will be required for HMOs with fewer than seven residents. Of the 90% of respondents who agreed with the amendment, 20% qualified their answer requesting further information or clarification on specific issues. Four (10%) of the respondents did not agree with the proposal and either thought that there was no need to introduce a new use class or that the proposal should go further. 13 of the 15 local planning authorities that responded agreed with the proposal, with two stating that the change should not be made.

Overview

5.21 The majority of respondents supported the proposal to introduce a new C4 use class to allow local authorities to manage future proposals for HMOs within their communities. However, there was concern that the

new use class was open to interpretation and challenge with a number of respondents requesting further guidance to make a clear distinction between use classes C3 and C4.

- 5.22 Many respondents considered that the proposed change would allow local planning authorities to manage proposals for small HMOs and consider whether they are appropriate in planning terms. Some respondents did state that while they agreed with the proposal they noted that issues associated with HMOs are different and more prevalent in certain locations, therefore there is a need to retain flexibility and discretion. Concern was expressed from some LPAs regarding the resulting burden faced by creating policy and handling of planning applications, etc.
- 5.23 Four respondents opposed the introduction of the new use class. One local authority considered that the current position is sufficient to manage HMOs. They stated that HMOs are currently classed as 'sui generis' use (of its own class) and already require planning permission if the unit is occupied by persons that do not form a single household under the planning definition of a single household or are not a family.
- 5.24 One respondent questioned the findings of the research report that proposed the amendments and specifically opposes the introduction of use class C4 or any further planning regulations for HMOs with fewer than seven residents. They considered that the proposal for local planning authorities to adopt local policies for controlling the density and spread of HMOs against which planning applications would be assessed, would lead to an inconsistent approach across Wales. They also considered that the Welsh Government and local authorities should focus instead on funding and facilitating community led projects, which would help solve issues related to HMOs, such as anti-social behaviour.

Welsh Government Response

- 5.25 The introduction of a new use class C4 has the overriding aim of allowing local planning authorities the opportunity to consider the impacts of proposed HMOs on their communities. The Welsh Government considers that the proposed amendment, which has received general support, will provide local planning authorities the opportunity to consider and manage the impact of HMOs occupied by not more than six residents, from a planning perspective.
- 5.26 The amendment will also enable local planning authorities to adopt local policies to control the density and spread of this type of housing. Planning applications would then be assessed against these local policies allowing local authorities greater control over new HMOs. However, the Welsh Government considers that it will be for individual local planning authorities to consider the balance of costs and benefits in their particular area in deciding whether or not to have local policies.

5.27 The Welsh Government accepts that the new use class may be open to interpretation and will provide further guidance to assist with making the distinction between use classes C3 and C4. It is also proposed to clarify that in use class C3(a) the term ‘single household’ is to be construed in accordance with section 258 of the Housing Act 2004.

Question 14:

Do you agree with our proposal to align the definition of an HMO for planning purposes with the housing definition set out in section 254 of the Housing Act 2004?

Question 14	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	1	10	1	4	3	10	29	76.3
Yes with further comment	0	3	0	0	0	0	3	7.9
No	0	1	0	4	1	0	6	15.8
Total	1	14	1	8	4	10	38	

Statistical Review

5.28 There was widespread support for this proposal with just over 84% of respondents agreeing that the planning definition of HMOs should be aligned with the Housing Act for consistency reasons. Six (15.8%) respondents specifically opposed the proposal and did not agree, stating various concerns.

Overview

5.29 The majority of respondents supported the proposal to align the planning definition of HMOs with the Housing Act definition to provide consistency. Respondents did state that this proposal still leaves room for interpretation and challenge, but felt that it would assist in managing proposals of this nature and is a sensible approach to ensure consistency.

5.30 However, some respondents considered that it is not appropriate to use the Housing Act definition for planning purposes given that the Housing Act and planning laws are designed for different regulatory uses. Some respondents considered that the definition set out in Section 254 of the Housing Act is not particularly clear and that further guidance is required to ensure the proposal operates effectively.

Welsh Government Response

- 5.31 The research has identified difficulties for local authority officers and property owners arising from the different definitions of an HMO for housing and planning purposes in Wales. Therefore, the Welsh Government considers that aligning the definition of an HMO for planning purposes with the housing definition set out in section 254 of the Housing Act 2004 will provide clarity and consistency.
- 5.32 In order to provide clarity regarding the changes to the Use Classes Order, the Welsh Government intends to provide related guidance.

Question 15:

Do you agree with our proposal to enable small Houses in Multiple Occupation (new use class C4) to revert to use as a dwellinghouse (Class C3) without requiring planning permission by amending the Town and Country Planning (General Permitted Development) Order 1995?

Question 15	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	1	12	1	3	3	8	28	75.7
Yes with further comment	0	2	0	1	0	0	3	8.1
No	0	0	0	3	1	2	6	16.2
Total	1	14	1	7	4	10	37	

Statistical Review

- 5.33 Over 83% of respondents agreed with the proposal to enable small HMOs (new use class C4) to revert to use as a dwelling house (use class C3) without requiring planning permission. However, 16% of respondents did not agree with the proposal for varying reasons.

Overview

- 5.34 The majority of respondents thought that this proposal was a sensible approach. It was considered that to restrict the change from class C4 to class C3 would bring few recognisable benefits and be difficult to manage. A number of respondents supported this proposal provided that planning permission was required if the property was to revert to an HMO in the future.
- 5.35 The respondents who disagreed with this proposal considered that all changes of use should be carefully considered. Concerns were expressed around the issue of “flipping” between use classes C3 and C4.

- 5.36 The two respondents who oppose the need for and the principle of the proposed changes to the Use Classes Order do consider that if they are implemented then a permitted change between class C4 and C3 would have merit. One respondent states that it is imperative that the market is able to act quickly in adapting to changing needs and demand, without being burdened with unnecessary bureaucracy and any additional fees. In addition they consider that once a dwelling has reverted back to use class C3 the landlord / owner should be able to 'flip it' back to use class C4 without further planning consent being required.

Welsh Government Response

- 5.37 The Welsh Government agrees that to restrict the change from use class C4 to C3 would bring few recognisable benefits and be difficult to manage.
- 5.38 The Welsh Government does not support the view that once a dwelling has reverted back to class C3 the landlord / owner should be able to 'flip it' back to class C4 without further planning consent. This would undermine the overriding aim of allowing local planning authorities the opportunity to consider the impacts of proposed small HMOs on their communities.

Question 16:

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

- 5.39 Comments in relation to HMOs have been considered as part of the analysis of the questions above.

Annex A - Full List of Respondents by Category

The list below indicates the categories to which respondents assigned themselves when completing the consultation form. For data protection purposes the name and address details for those respondents who did not wish to be identified have been removed from the published consultation responses.

Businesses / Planning Consultants

- 03 – Renewable Developments Wales Ltd
- 04 – National Grid
- 48 – Persimmon Homes West Wales
- 50 – Redrow Homes South Wales

Local Planning Authority

- 11 – Neath Port Talbot County Borough Council
- 14 - Merthyr Tydfil County Borough Council
- 17 – Vale of Glamorgan Council
- 18 – Caerphilly County Borough Council
- 19 – City and County of Swansea
- 22 – Denbighshire County Council
- 25 – Newport City Council
- 32 – Welsh National Parks
- 35 – Rhondda Cynon Taf County Borough Council
- 36 – City of Cardiff Council
- 40 – Bridgend County Borough Council
- 41 – Gwynedd Council
- 43 – Flintshire County Council
- 47 – Monmouthshire County Council
- 58 – Conwy County Borough Council

Government Agency / Other Public Sector

- 09 – Mick Antoniw AM (Pontypridd)
- 23 – Health & Safety Executive
- 26 – ONR
- 52 – Natural Resources Wales
- 54 – The Theatres Trust
- 60 – The Coal Authority
- 65 – Design Commission for Wales

Professional Bodies / Interest Groups

- 24 – Design out Crime Group Wales
- 29 – Clwydian Range and Dee Valley Joint Committee
- 30 – South Wales Police Force
- 31 – Council of British Archaeology

- 38 – Law Society
- 39 – Royal Town Planning Institute Cymru
- 46 – Planning Officers Society Wales
- 51 – Guide Dogs Cymru
- 53 – Welsh Historic Gardens Trust
- 55 – Chartered Institute for Archaeologists
- 57 – Home Builders Federation
- 59 – CLA
- 62 – Residential Landlords Association Cymru
- 63 – Royal Society of Architects in Wales
- 64 – Institute of Historic Building Conservation
- 71 – Anon

Voluntary Sector

- 05 – Treforest Residents Association
- 06 – Neath Port Talbot Council for Voluntary Service
- 08 – Abergavenny and District Civic Society
- 13 – Anon
- 27 – Age Cymru
- 28 – Brecknock Access Group
- 33 – Disability Advice Project
- 44 – Glamorgan-Gwent Archaeological Trust Ltd
- 49 – Community Housing Cymru Group
- 69 – Disability Wales
- 70 – Anon

Other or Individual

- 01 – Arfon Hughes
- 02 – Angela Thompson
- 07 – Alun Kendall
- 10 – Anon
- 12 – Anon
- 15 – Nortridge Perrott
- 16 – Anon
- 20 – Anon
- 21 – Anon
- 34 – Anon
- 37 – Glyn Davies
- 42 – Severn Trent Water
- 45 – Anon
- 56 – Welsh Water
- 61 – Canal & River Trust in Wales
- 66 – Anon
- 67 – Anon
- 68 – Sandy Reid Johns

Annex B – Statistical Overview of all Responses

The table below provides an overview of all responses to the questionnaire. It is based on the tables in the section on Statistical Breakdown and Overview of the Responses to Each Question and gives a strategic outline of the overall responses to the consultation and their relative support for the questions posed.

Consultation question	Agree; Agree with further comment; Disagree	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
1. Do you agree with the proposal to amend paragraph (i)?	Yes	4	10	4	5	3	0	26	78.8
	Yes with further comment	0	3	0	3	0	0	6	18.2
	No	0	1	0	0	0	0	1	3.0
2. Do you agree with the proposal to amend paragraph (k)?	Yes	4	5	3	2	3	1	18	48.6
	Yes with further comment	1	6	1	5	1	0	14	37.8
	No	0	4	0	1	0	0	5	13.5
3. Do you agree with the proposal to amend paragraph (r)?	Yes	3	5	4	5	2	1	20	57.1
	Yes with further comment	1	6	0	1	1	0	9	25.7
	No	0	4	0	2	0	0	6	17.1

Consultation question	Agree; Agree with further comment; Disagree	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
4. Do you agree with the proposed changes as set out in Table 4: (a) To remove paragraph (n)? (b) To remove paragraph (u)? (c) To add paragraph (y) to NRW's statutory consultation requirements?	Yes	3	8	4	5	2	1	20	57.1
	Yes with further comment	1	4	0	1	1	0	9	25.7
	No	0	2	0	2	0	0	6	17.1
5. Do you agree with the proposed new consultation thresholds for WASU identified in Table 5 above?	Yes	3	5	4	5	3	0	20	58.8
	Yes with further comment	2	8	0	1	1	0	12	35.3
	No	0	2	0	0	0	0	2	5.9
6. Are there any other thresholds that should be included in/or excluded from Schedule 4 of the DMPWO? If so, please identify these and explain why they should be included or excluded.	Yes	0	3	3	4	1	0	11	37.9
	Yes with further comment	0	2	0	0	2	0	4	13.8
	No	3	10	1	0	0	0	14	48.3
7. Do you think that major development as described under c, d and e of paragraph 3.19 and the DMPWO is the right threshold for requiring a Design and Access Statement? If not, what would be an appropriate threshold?	Yes	2	11	1	9	4	0	27	52.9
	Yes with further comment	3	4	1	2	1	1	12	23.5
	No	1	0	1	2	7	1	12	23.5

Consultation question	Agree; Agree with further comment; Disagree	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
8. Do you agree with our proposals to have different thresholds in Conservation Areas and World Heritage Sites? If not, to what other sensitive areas, if any, should a smaller threshold apply?	Yes	5	10	2	4	7	2	30	68.2
	Yes with further comment	1	4	0	5	2	0	12	27.3
	No	0	1	0	1	0	0	2	4.5
9. Do you agree with our proposed threshold for Design and Access Statements in these sensitive areas? If not, what would be an appropriate threshold?	Yes	4	12	1	5	7	2	31	77.5
	Yes with further comment	1	2	0	3	1	0	7	17.5
	No	0	1	0	1	0	0	2	5.0
10. Do you agree with the proposal to incorporate the requirement for a statement on design within an HIA when preparing an application for listed building, scheduled monument or conservation area consent?	Yes	4	7	0	4	6	3	24	57.1
	Yes with further comment	1	8	0	5	3	0	17	40.5
	No	0	0	1	0	0	0	1	2.4
12. Do you agree with our proposals to simplify the statutory content of Design and Access Statements?	Yes	4	10	1	4	4	0	23	48.9
	Yes with further comment	2	3	1	5	1	0	12	25.5
	No	0	2	1	4	5	0	12	25.5

Consultation question	Agree; Agree with further comment; Disagree	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
13. Do you agree that a new use class C4, whereby planning permission will be required for HMOs with fewer than seven residents, should be introduced?	Yes	1	8	1	6	2	10	28	70.0
	Yes with further comment	0	5	0	2	1	0	8	20.0
	No	0	2	0	1	1	0	4	10.0
14. Do you agree with our proposal to align the definition of an HMO for planning purposes with the housing definition set out in section 254 of the Housing Act 2004?	Yes	1	10	1	4	3	10	29	76.3
	Yes with further comment	0	3	0	0	0	0	3	7.9
	No	0	1	0	4	1	0	6	15.8
15. Do you agree with our proposal to enable small Houses in Multiple Occupation (new use class C4) to revert to use as a dwellinghouse (Class C3) without requiring planning permission by amending the Town and Country Planning (General Permitted Development) Order 1995?	Yes	1	12	1	3	3	8	28	75.7
	Yes with further comment	0	2	0	0	0	0	2	8.1
	No	0	0	0	3	1	2	6	16.2