

Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2012

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2012.

I am satisfied that the benefits outweigh any costs.

John Griffiths

Minister for Environment and Sustainable Development

22 May 2012

(a) Description

1. In 2009 the installation of specified microgeneration equipment was made permitted development in Wales through the introduction, in the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2009 (S.I. 2009/2193 (W.185)), of Part 40 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418) (the GPDO).

This Order substitutes a new Part 40 of Schedule 2 to the GPDO. The new Part 40 confers permitted development rights for the installation of specified microgeneration equipment on or within the curtilage of dwellinghouses or flats subject to certain criteria. It adds three new classes of permitted development rights regarding air source heat pumps (Class G), stand alone wind turbines (Class H) and anemometry masts (Class I). In addition it amends Class A to make the installation of solar panels on flat roofs permitted development subject to certain criteria. Where applicable, these changes will remove the need to make an application to the local planning authority (LPA) to obtain planning permission which could discourage the uptake of microgeneration equipment by householders.

(b) Matters of special interest to the Constitutional and Legislative Affairs Committee

2. None

(c) Legislative Background

3. The power to make this instrument is provided by sections 59, 60, 61 and 333(7) of the Town and Country Planning Act 1990 (the Act).
4. These sections give the Secretary of State power to grant planning permission for categories of development specified in a development order. The GPDO is made under these powers and grants automatic planning permission for a range of predominantly minor development, subject to certain criteria. Development granted automatic planning permission is known as permitted development.
5. The functions of the Secretary of State under sections 59, 60, 61 and 333(7) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672): see the entry in Schedule 1 for the Town and Country Planning Act 1990 (c.8) as substituted by Article 4 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253). The functions were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006(c.32), the functions being relevant Assembly functions as defined in paragraph 30(2).
6. Negative Resolution: Section 333 of the Act provides that the procedure for a statutory instrument which contains a development order is a negative resolution procedure. There are some exceptions to this provision but they do not apply in this instance.

(d) Purpose and intended effect of the legislation

7. Microgeneration is the small-scale production of heat and/or electricity from low carbon sources. Some microgeneration technologies produce energy using renewable resources such as solar, wind or biomass (e.g. wood) and some, like combined heat and power, may use fossil fuels but are much more efficient than conventional systems. Microgeneration offers a practical response to climate change, national energy security and energy poverty. The Welsh Government's policies support the encouragement of microgeneration as a realistic alternative or supplementary energy generation source for the householder, the community and for small businesses.
8. The current uptake of domestic scale wind microgeneration in Wales is quite low with an average of 383 installations per annum compared to 3,200 in the UK¹. This equates to approximately 12% of the UK Market. In terms of a Welsh average sales value this equates to approximately £4.6m per annum. In respect of air source heat pumps (ASHPs) limited data is available regarding the uptake to date. However the Federation of Environmental Trade Associations estimates that an upper limit of 2,500 domestic ASHPs have been installed in the UK since 2004². It has not been possible to identify robust data for ASHPs on a Wales only basis. However if we consider the average sales value on the UK level it would equate to approximately £3.5m per annum.
9. The regime governing the need for planning permission for stand alone wind turbines (SAWTs) and ASHPs can act as a barrier to wider uptake. The process of seeking planning permission can be complex, costly, time consuming and uncertain.
10. The Welsh Government's objective is to promote the uptake of this domestic microgeneration by classifying appropriate development as permitted development under the GPDO. The SAWTs and ASHPs that must be used in the new G & H classes must be certified and installed in accordance with the Microgeneration Certification Scheme Planning Standards or equivalent standards. While the Welsh Government wants to encourage the widest possible uptake of microgeneration, it is also concerned to ensure that the right levels of control are retained to protect the reasonable interests of neighbours, the environment and the wider community.
11. The intended effects of the proposals include:
 - the reduction in the cost to the householder of obtaining planning permission (the perceived barrier to uptake);
 - potential energy savings to householders (and commensurate reduction in demand for traditional non-renewable sources);
 - wider direct and indirect effects including a reduction on the burden on LPAs;
 - stimulation of the market demand for renewable technologies, increased investment within the industry and efficiency improvements in microgeneration equipment;
 - increased uptake of renewable sources of power relative to non-renewable sources leading to knock-on effects on carbon savings;
 - contributing towards national (and local) targets for renewable energy and increased energy security.

¹ extrapolated from data contained in the [Small Wind Systems: Uk Market Report April 2011](#) – Renewable UK

² <http://www.feta.co.uk>

12. More generally, these proposals represent a deregulatory initiative and are in line with the Welsh Government's objective of improving the overall efficiency of the planning system.

(e) Implementation

13. It is intended that the Order will come into force after the expiration of the standstill period related to the Order's referral to the European Commission in accordance with the Technical Standards and Regulations Directive 98/34/EC (as amended by Directive 98/48/EC).
14. There are no legal or other implications for the Welsh Government should the dates not be met.
15. On the 1st December 2011 England introduced amendments to Part 40 of the GPDO, relating to domestic scale wind turbines and ASHPs in England. The provisions being introduced in Wales follow the spirit of the amendments introduced in England in the interest of promoting consistency and greater market certainty within the UK.

(f) Consultation

16. [Consultation](#) was undertaken on the proposed revisions to the GPDO in April 2010 for 14 weeks. Details can be found in the following Regulatory Impact Assessment.

(g) Regulatory Impact Assessment

- 17 This is a Regulatory Impact Assessment of the likely impacts of proposals to amend the GPDO to extend permitted development rights to the above mentioned classes.

• Options

18. Two options were considered:
 - (1) Do nothing and maintain the current permitted development rights introduced in 2009.
 - (2) Permit SAWTs (and associated temporary anemometry masts), ASHPs and solar panels on flat roofs subject to conditions to make their impacts acceptable.
19. The option testing process does not take into account external events that might affect the uptake of microgeneration equipment (such as an increase in the relative price of non-renewable fuels) or different methods of intervention to address the overall objectives set out in UK Government policy; such as any changes to the financial incentives for households delivered through the Feed in Tariff.
20. (1) Do nothing
Under the present regime domestic SAWTs (and associated temporary anemometry masts), ASHPs and solar panels on flat roofs require planning permission in Wales. The 'do nothing' option assumes that this situation remains, and planning authorities insist upon planning applications for all categories of equipment covered by these proposals.
21. (2) Permit SAWTs (and associated temporary anemometry masts), ASHPs and solar

panels on flat roofs subject to conditions to make the impacts acceptable.

- 22 Option 2 would provide for the specified microgeneration equipment defined as 'microgeneration' in section 82 of the Energy Act 2004 – that is electricity generating equipment with a capacity of less than 50 kilowatts and heat production equipment with a capacity of less than 45 kilowatts thermal. The specified microgeneration equipment would be treated as permitted where the development complies with the criteria set out in this instrument. This instrument generally permits domestic households to install specified microgeneration equipment without applying for planning permission subject to limits in respect of size, positioning, noise etc to control impacts on neighbours and the wider community.
- 23 In order to ensure the safety of civilian and military aviation a web based aviation safeguarding toolkit has been produced which identifies areas of Wales, known as safeguarded areas, where due to the operation of sensitive aviation equipment (e.g. radar) it would not be appropriate to grant permitted development rights for SAWTs. This does not mean that SAWTs cannot be installed in safeguarded areas; it means that SAWTs cannot be installed in safeguarded areas without planning permission which will enable the LPA to consider the design, height and location of the SAWT in detail, and liaise with aviation operators. This Order excludes permitted development rights for SAWTs in Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest and World Heritage Sites. However it is not proposed to exclude permitted development rights for SAWTs in National Parks as they can contain built settlements (e.g market towns) where such development could be appropriate providing it meets the other conditional criteria. It should therefore remain the responsibility of the LPA to use Article 4 GPDO Directions to remove permitted development rights if they consider that the local importance of specific areas within their boundaries warrant more restrictive control.

• **Benefits**

24. There are four main categories of quantified benefit, which will be examined in turn:
- (i) Savings from the reduced cost of planning applications
 - (ii) Fuel cost savings
 - (iii) Reduced carbon emissions
 - (iv) Energy security
25. (i) Savings from the reduced cost of planning applications
Making a planning application incurs the following costs:
- Direct cost: the planning fee
 - Indirect costs: transaction costs such as professional fees, production of scaled drawings etc.
26. If the requirement to seek planning permission were removed these costs would no longer be incurred. The saving per application would be as follows:
- Planning fee is £166
 - Transaction cost is £725³
- This produces a saving of approximately £890 per installation, which factored up for the average number of annual installations in Wales would produce a saving of

³ Based on the PwC Administrative Burdens Measurement Project. The transaction cost of a minor application was calculated as £1450. It was assumed that a householder consent would cost half of this, or £725.

approximately £337,000 per annum.

27. By applying the saving per installation of £890 to the number of installations that would otherwise have required planning permission cumulative savings for option 2 can be calculated as approximately £2.69m up to 2020 based on existing uptake for micro wind turbines. However if we predict that the introduction of this Order will result in greater certainty that developments can proceed, and thus increase the level of uptake by 10% per year; then savings by 2020 could actually double.

28. (ii) Fuel cost savings
If households get some or all of their energy requirements from microgeneration equipment then their fuel bills would be reduced. However these savings are only relevant for those households that install microgeneration equipment as a consequence of removing the requirement to obtain planning permission. Fuel savings will depend on the future price of energy and have to be considered in relation to the cost of installing the relevant equipment. However in the case of SAWTs and ASHPs the greatest uptake is likely to be in rural areas, which are primarily off the gas grid and reliant on LPG or oil deliveries which have seen significant price increases (for example from September 2010 to December 2010 the average price of domestic heating oil increased by approx 73% as demand increased due to the very cold weather). Therefore the savings from reduced fuel and electricity bills are likely to be highest in rural parts of Wales, which are currently off grid.

29. (iii) Carbon savings
Microgeneration provides a more environmentally sustainable form of energy production than non-renewable sources. A greater use of microgeneration equipment would lead to lower emissions of carbon dioxide. However it is necessary to account for the embodied energy and carbon costs arising from the manufacture and installation of the equipment. Although it is not possible to provide quantifiable figures in relation to this at this time for Wales.

30. Since option 2 produces significant savings both in the short term (e.g. the cost of planning consent) and the longer term (e.g. reduced fuel and electricity bills) it is likely to encourage growth in the microgeneration renewable energy market, and so microgeneration equipment (SAWT, ASHP, and Solar Panels) will provide a larger contribution towards meeting carbon reduction targets than is currently the case. However if greater uptake results in UK suppliers being unable to fulfil market demand and consequently there is an increase of foreign imports then the embodied energy costs associated with transport will be higher. However it is not possible to provide quantifiable figures in relation to this at this time for Wales.

31. (iv) Energy security
Microgeneration can contribute positively towards renewable energy targets, increasing the overall stock of UK energy supply and adding to long term energy security. Option 2 presents the lesser constraint to microgeneration renewable energy development, which should result in higher uptake and therefore the greatest effect.

32. Benefits to the Microgeneration Industry and Secondary Benefits
The increase in demand for microgeneration equipment will benefit firms that produce and install microgeneration equipment. This has the potential to boost investment in microgeneration leading to efficiency improvements and further job

creation. This could further benefit consumers and the environment as prices fall, output increases and embodied energy costs decrease. Any price falls will depend on the capacity of the industry and the structure of the market.

• Costs

- 33 It is difficult to place a monetary value on the costs of removing the requirement to seek planning permission for the installation of microgeneration equipment. This is because many of the costs concern non-marketed goods such as: landscape, noise pollution and the environment. Because these goods are not bought and sold in conventional markets it is very difficult to put a monetary value on them. There would be a reduction in planning fee income for LPAs, however the £166 fee does not cover the costs of handling the application⁴, and so in real terms there would be a net benefit for LPAs.
- 34 In some circumstances there may be resource implications on LPA Environmental Health Departments in investigating noise complaints if equipment has not been installed or maintained properly, or is close to a sensitive receptor. As a simplified guide if complaints were made in relation to 40% of installed SAWTs per annum then this would equate to approximately 120 cases across Wales, which would be an average of 5 cases per LPA per year. It is appreciated that some LPAs are likely to receive more complaints than others however it is not expected to create significant additional work overall as on average a Welsh Environmental Health Department is already dealing with 681 domestic noise complaints per year⁵. The consultation document clearly identified that Local Authorities will continue to have powers to take action under the Environmental Protection Act 1990.
35. Costs to conventional energy providers
If more households get some or all of their energy requirements from microgeneration equipment there will be a reduced demand for energy from other sources. This imposes costs on more conventional energy providers in terms of lost business. However as a proportion of the total conventional energy market these reductions in demand are likely to be small, especially as a large proportion of SAWT installations are anticipated to be located in rural locations due to the need to comply with conditional criteria relating to noise levels at neighbouring properties.
36. Landscape and amenity
The planning regime provides an effective control of the location and by implication visual impact and amenity of the development of domestic microgeneration. Granting permitted development rights may result in cases of microgeneration equipment being installed in inappropriate locations; however the conditional criteria should help to ensure that this does not occur and LPAs would still be able to use Article 4 GPDO Directions to ensure that visual impact and residential amenity are protected in locally sensitive areas if they so choose.

⁴ <http://www.communities.gov.uk/publications/planningandbuilding/killianprettysummary>

⁵ Chartered Institute of Environmental Health Figures 09/10 – identified approximately 5,000 domestic complaints per 1 million population. Therefore for Wales this would be approximately 15,000 complaints, which divided by 22 (Local Authorities) would provide an average of 681 complaints per authority.

37 Biodiversity

The Welsh Government must have regard to duties under section 11A of the National Park and Access to the Countryside Act 1949, section 85 of the Countryside and Rights of Way Act 2000 and the Conservation of Habitats and Species Regulations 2010. The installation of the specified microgeneration equipment is subject to certain criteria and LPAs will be able to use Article 4 GPDO Directions to remove permitted development rights if they consider that areas within their boundaries warrant more restrictive control.

38. Equality

As required by the Equality Act 2010 we have also examined whether any of the options would have an unfavourable impact on persons who share a relevant protected characteristic. We have concluded that they would not.

39. Small firms impact test

The SAWTs and ASHPs that must be used in the new G & H classes must be certified and installed in accordance with the Microgeneration Certification Scheme Planning Standards or equivalent standards.

40. There are clearly a number of different types of small firms that may be affected (in terms of demand for goods and services) as a result of an increase in uptake of domestic microgeneration equipment. In Option 1, the do nothing approach, there are a number of small firms that may be involved such as surveyors/consultants or architects/drafting firms who may provide advice about or drawings for planning applications. In Option 2 there may be a reduction in demand for these services however applications for domestic microgeneration installation currently make up less than 1% of all householder applications and the overall impact on these firms should therefore be small.

41. Equally with increased permitted development rights there will be a potential increase in demand for microgeneration equipment – having a knock-on effect on the supply chain, such as manufacturers, suppliers and installers.

42. The Federation of Small Businesses has indicated that it has 10,000 members in Wales with 30% working from home whose businesses could benefit indirectly from increased permitted development for microgeneration. The Federation has identified security of supply as a priority for small businesses and stresses the importance of locally produced energy in this regard. Whilst supporting greater uptake it accepts the need to avoid negative impacts on small businesses in the tourism sector.

43. The sectors most likely to be affected by the proposals are:

- Households wishing to purchase microgeneration equipment due to reduced planning costs.
- Microgeneration equipment manufacturers, installers and retailers as a result of greater demand as barriers to uptake are removed.

44. There may also be secondary effects to:

- Planning services/staff at LPAs (e.g. need to obtain training to better understand implications of proposals);

- LPA Departments that deal with enforcement relating to nuisance (e.g. if greater number of complaints are received from neighbouring households);
- Non-renewable energy suppliers – power generation, oil/gas companies as well as other indirect supply chain effects (e.g. experience reduced demand as barriers to uptake are removed); and
- Neighbours and surrounding occupiers (e.g. potential impact from noise and/or vibration or loss of visual amenity).

• **Competition assessment**

45. The possible competition impacts of the options within this review have been assessed. The approach adopted is as set out by the UK Government's Cabinet Office⁵, referring in turn to more detailed Guidelines for competition assessment set out by the Office of Fair Trading⁶.
46. It has not been practicable to undertake a full, detailed competition assessment across all affected markets. Therefore, the likely competition impacts have been assessed in mainly qualitative terms based on an understanding of the affected markets, the current market structure, the nature of competition and the likely positive and negative impacts of the possible policy measures. The level of analysis within this Impact Assessment has been determined by the availability and detail of the data and information.
47. Consideration has been given both to effects upon competition in the UK (relating to potential reductions in market distortions) and to effects upon UK competitiveness. For the latter, the analysis relates to the potential for economies of scale in production for UK firms as compared to those in EU firms and also in non-EU firms. In both cases, the results of improvements in the economies of scale in production may result in more activity (and knock-on job creation) in the UK and abroad. In the subsequent sections, consideration is given in turn to competition issues and the question of potential impacts on competitiveness.
48. Competition effects
An assessment of the potential competition effects of the options has been undertaken. However it has not been possible to provide a monetary value for these effects. The main conclusions that can be drawn at this stage are:
- Household electricity and gas are supplied mainly by large energy supply companies. The options discussed within this assessment are likely to have relatively negligible effects on their operations. If uptake of domestic microgeneration were to rapidly increase, however, this may potentially result in increasing activity in this sector from such companies (indeed, a number of major energy supply companies are already active in the microgeneration industry). Furthermore, increased uptake of microgeneration may provide price competition with the more conventional fossil fuels.
 - Fewer planning restrictions are likely to stimulate demand for microgeneration equipment. This in turn may allow microgeneration companies to benefit from economies of scale in their production techniques with greater mechanisation and worker productivity. The result may be a reduction in the price of microgeneration equipment which in turn may stimulate further demand.

⁵ http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/index.asp.

⁶ <http://www.offt.gov.uk/NR/rdonlyres/A7138977-6FE2-45DE-BE32-3AB6E767664A/0/oft355.pdf>

- Due to the limits on capacity being imposed on microgeneration equipment manufacturers may concentrate on developing the equipment that falls below the limits to exploit the developing market. Microgeneration equipment with capacity above the limits may therefore come at a premium and may become less competitive, however the potential disparity may be addressed if changes to non-domestic permitted development rights are introduced.
- Fewer planning restrictions may reduce barriers to market entry for new businesses subject to the requirement that the SAWTs and ASHPs that must be used in the new G & H classes must be certified and installed in accordance with the Microgeneration Certification Scheme Planning Standards or equivalent standards. Smaller microgeneration manufacturers may face a more favourable commercial market compared to the current situation. However existing firms who are already more efficient in their production methods may be able to create barriers to entry through competitive pricing (thereby reducing the profitability of entry).

Consultation

49. Within Government

In preparing the proposals for consultation we consulted widely with colleagues in England, Scotland and Northern Ireland.

50. Public consultation

A full consultation exercise took place between the 14th April and 10th July 2010. A wide range of stakeholders (approx 300) including LPAs, microgeneration trade associations, national bodies and environmental groups were sent a consultation package explaining the proposals and seeking responses to a questionnaire. The consultation was reported in the technical press and the material was available online.

51. A total of 53 responses to the consultation proposals were received from the following groups:-

LPAs (including the 3 National Park Authorities)

Members of the public

National/Regional Organisations

Energy Businesses

The 'key issues' summary below indicates the balance of opinion held by the 53 respondents who replied to some, or all, of the questions included with the consultation document.

52. The response was generally positive, with unanimous support for the principle of increasing permitted development rights for microgeneration because of the perceived importance of climate change. Much of the comment related to points of detail as to how the measures proposed would be implemented.

53. Key Issues

In summary the key issues were:-

- Noise and vibration - The most significant concerns were how the potential impacts of noise and vibration associated with SAWTs and ASHPs should be addressed in the permitted development regime. The approach proposed in the consultation paper was viewed as inadequate and unworkable by a significant number of respondents.

- Sensitive Areas - The consultation proposals identified Conservation Areas (to include World Heritage Sites) as sensitive but 55% of responses maintained that there should be similar protection for National Parks and Areas of Outstanding Natural Beauty (AONBs).
- Protected Species - The consultation question seeking instances of any impact of micro wind turbines and the installation of solar panels on bat or other species protected by legislation revealed only very limited evidence. One respondent suggested no impact at a monitored installation and the Bat Conservation Society's own questionnaire survey identified only four minor incidents. The Countryside Council for Wales advised that a monitoring programme and review approach be adopted.
- Prior notification - Arrangements whereby permitted development rights do not apply until the planning authority has been given a limited opportunity to consider whether or not the proposed development raises serious planning issues was mooted for use in sensitive areas in several responses and also to deal with other impacts such as on protected species.

54. Amendments made as a result of the consultation.

In the light of responses we have acknowledged that a number of changes should be made including:

- Sensitive areas for SAWTs to include AONBs
- Protecting neighbouring garden amenity through excluding the installation of ASHPs within 3 metres of the boundary.
- Not allowing an ASHP to be installed on a pitched roof, or on a wall or roof which fronts a highway
- Imposing through the Microgeneration Certification Scheme Planning Standards a noise limit of 42dB L.
- Not taking forward the proposed set distance and smaller blade swept area restrictions - the noise limit condition will effectively dictate how far away from properties and what the blade diameter can be on a site by site basis. Therefore the upper limit of a 9.6m² swept area proposed in the consultation will form part of the conditional criteria.
- Permitted development rights for SAWTs (and associated temporary anemometry masts) will not apply on safeguarded land identified from the aviation safeguarding toolkit.

55. Main issues arising where no change has been made

All issues raised by the consultation have been carefully considered but not all proposals for change have been accepted, not least because there were often opposing views. The key issues raised by a significant number of responses where we have not made changes are:-

- Sensitive areas have not been extended to include National Parks because of the climate change imperative, the potential benefits of microgeneration in rural off-grid areas, the potential for installations in market towns and rural settlements and as the domestic scale of installations should not have a significant impact on the wider landscape.
- Adopting a 'prior approval' regime. These systems are not well understood by the public, would create difficulties for all involved and would not provide the certainty required to encourage the uptake of microgeneration equipment.

• Post Implementation Review

56. It is anticipated that the Welsh Government will collaborate with DCLG to assess the implications of the 42dB noise limit after the first anniversary of this instrument coming into force.

• Summary

57. Microgeneration is the small-scale production of heat and/or electricity from low carbon sources. Some microgeneration technologies produce energy using renewable resources such as solar, wind or biomass (e.g. wood) and some, like combined heat and power, may use fossil fuels but are much more efficient than conventional systems. The current uptake of domestic microgeneration is estimated to be low.
58. Microgeneration offers a practical response to climate change, national energy security and energy poverty. The Welsh Government's policies support the encouragement of microgeneration as a realistic alternative or supplementary energy generation source for the householder, the community and for small businesses.
59. The need for planning permission for the installation of microgeneration equipment can act as a barrier to its wider uptake. The GPDO grants rights (known as permitted development rights) to carry out specified forms of development without the need to make an application for planning permission. Inclusion of specified microgeneration equipment within the GPDO can directly eliminate the cost of applying for planning permission, which is estimated to be £890 per installation (taking into account both the planning fee and transaction cost).
60. The proposal is to amend the GPDO to allow specified microgeneration equipment where the impact is acceptable. This proposal could have significant benefits if the demand and uptake for microgeneration equipment leads to reductions in price through economies of scale and in improvements to the effectiveness of the equipment. It will encourage companies to research and develop more energy effective equipment and mass production will drive prices to levels that are more affordable for more householders which will in turn stimulate further demand.
61. More generally, the proposal is a deregulatory initiative which is in line with the objective of reducing the regulatory burden on households and to improve the overall efficiency of the planning system.