

EXPLANATORY MEMORANDUM TO:

The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2014

The Town and Country Planning (Compensation) (Wales) Regulations 2014

This Explanatory Memorandum has been prepared by the Department for Housing and Regeneration 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 2014
- The Town and Country Planning (Compensation) (Wales) Regulations 2014

I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM
Minister for Housing and Regeneration

11 March 2014

1. Description

The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2014

- 1.1 The Town and Country Planning (General Permitted Development) Order 1995 (the “GPDO”), as amended, allows some minor development to be undertaken, within certain parameters, without the need to submit a planning application. This is known as “permitted development”.
- 1.2 The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2014 amends the Town and Country Planning (General Permitted Development) Order 1995 (“the 1995 Order”) in relation to Wales.
- 1.3 Broadly, the effect of the Amendment Order is to provide:
 - Amended permitted development rights (“PDRs”) for Industrial and Warehouse Development (Part 8 of Schedule 2 to the GPDO). In particular, an allowance is made for new buildings and some of the previous permitted development rights for industrial buildings and warehouses now apply to research and development uses.
 - Amended PDRs for Schools, Colleges, Universities and Hospitals (Part 32 of Schedule 2 to the GPDO). In particular, an allowance is made for extensions and alterations.
 - New PDRs for office buildings (use class B1(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (“Use Classes Order”).
 - New PDRs for shops and financial/professional services establishments (use classes A1 & A2 of the Schedule to the Use Classes Order).
 - New PDRs for refuse/cycle storage facilities to apply to Part 8 and Part 32 of schedule 2 to the GPDO, office buildings (use class B1(a)), shops (use class A1) and financial/professional services (use class A2) of the Schedule to the Use Classes Order
 - Greater protection for World Heritage Sites in the context of the permitted development substituted by and introduced by this Order.
 - PDRs for the laying of hard surfaces within the curtilage of an industrial building or warehouse providing the surfaces are either porous or permeable or designed to direct surface water run-off to a permeable/porous area.
 - Greater flexibility to change the use of industrial premises to and from use class B8 (storage and distribution) by amending Part 3 of Schedule 2 to the GPDO.

The Town and Country Planning (Compensation) (Wales) Regulations 2014

1.4 The Town and Country Planning (Compensation) (Wales) Regulations 2014 replace the Town and Country Planning (Compensation) (Wales) (No.2) Regulations 2012, and in doing so insert three additional descriptions of prescribed development under paragraphs (2A)(a) and (3C)(a) of section 108 of the Town and Country Planning Act 1990. The additional descriptions of prescribed development are:

- development permitted by Part 8 Class E (erection of a refuse or cycle store within the curtilage of an industrial building or warehouse);
- development permitted by Part 41 of Schedule 2 (office buildings); and
- development permitted by Part 42 of Schedule 2 (shops, financial or professional services).

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2014

- 3.1 The powers to make this Order are in sections 59, 60, 61 and 333(7) of the Town and Country Planning Act 1990.
- 3.2 These sections give the Secretary of State power to grant (or to enable local planning authorities to grant) planning permission for categories of development specified in a development Order. The GPDO is made under these powers.
- 3.3 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). Those 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).

- 3.4 Section 333(5) of the Act provides that the procedure for a statutory instrument which contains a development order is a negative resolution procedure.

The Town and Country Planning (Compensation) (Wales) Regulations 2014

- 3.5 The Welsh Ministers, in exercise of the powers conferred by section 108(2A), (3C), (3D), (5), and (6) of the Town and Country Planning Act 1990, now exercisable by them, have made the Town and Country Planning (Compensation) (Wales) Regulations 2014.

4. Purpose & intended effect of the legislation

The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2014

- 4.1 A number of research reports, commissioned by the Welsh Government, recommend the extension of permitted development rights for non-householder land uses in order to save time and money for business and public institutions, and to allow local planning authority resources to be focussed on more significant development proposals.
- 4.2 Specific, technical recommendations on how non-householder PDRs should be extended were made in “Final Report - Non Householder Minor Development Consents Review”, a report commissioned by DCLG that applies to England and Wales.
- 4.3 The recommendations of this report form the evidence base for the changes introduced in the Wales Amendment Order.

The issue to be addressed by legislation

- 4.4 The minor development consents review indicates that there are a number of problems with the GPDO, including:
- A number of land uses do not currently benefit from PDRs, which include offices, shops and financial/professional services. Occupiers of premises in these land uses are currently disadvantaged and are currently unable to undertake low-impact changes without the need to submit a full planning application.
 - Stakeholders have identified that existing PDRs for Part 32 (Schools, Colleges, Universities and Hospitals) are set so low as to be of little practical use and Part 8 of the GPDO does not currently permit the erection of new buildings.
 - On some subjects e.g. hard surfaces, flood risk and waste storage, the GPDO is outdated.

- Inconsistencies in the application of thresholds and limitations for PDRs – an impact approach to PDRs should be adopted, which takes account of the potential effect of development on neighbours and adjoining land uses.

4.5 The purpose of the Amendment Order is to address the above issues.

Who is affected?

4.6 The following sectors are most likely to be affected:

- **Commercial enterprises and institutions** that pay for and benefit from improvements and alterations to their premises.
- **LPAs** who advise on PDRs, determine applications for planning permission and consider enforcement action where development is carried out in breach of planning legislation.
- **Businesses** that provide design advice and often act as agents for those seeking planning permission.
- **Residents and other occupiers** of neighbouring property who may be affected by development in the area.

4.7 The objectives are:

- To reduce the administrative burden on industry, business and educational/health institutions by providing greater freedom to undertake minor development (in cases where there is no or insignificant impact) without the need to apply for full planning permission.
- To help towards reducing the overall number of applications for minor development in the planning system, thereby providing LPAs with the opportunity to re-allocate resources to development schemes that generate more complex issues.
- To address the potential amenity or environmental impact of permitted development: reducing flood risk by replacing the current allowance for hard surfaces in Part 8 of Schedule 2 to the GPDO with a requirement to install permeable hard surfaces or direct surface water run-off to a permeable/porous area; providing a degree of protection for the built heritage by restricting certain PDRs in World Heritage Sites.

Risks/hazards if legislation is not made

4.8 If amendments to the GPDO are not introduced, some small businesses could be deterred from extending or altering their premises due to the cost and delay of having to submit planning applications. LPAs would also still have to commit resources to determining minor, uncontentious applications for non-domestic development.

The Town and Country Planning (Compensation) (Wales) Regulations 2014

4.9 The Town and Country Planning (General Permitted Development) Order (GPDO), as amended for Wales, allows certain, minor developments

(“permitted development”) to be undertaken without the need for an individual application for planning permission.

- 4.10 These “permitted development rights” (PDRs) can, in some circumstances, result in adverse impacts at a local level. Local planning authorities are therefore able to issue directions under article 4 of the GPDO to withdraw PDRs. An article 4 direction does not prevent development but requires planning permission to be obtained if it is to be carried out.
- 4.11 Section 108 of the Town and Country Planning Act 1990 provides (among other things) that when a local planning authority withdraws PDRs by issuing a direction (and subsequently refuses an application required as a result of that direction or approves the application subject to conditions) they may be liable to pay compensation for abortive work or other loss or damage directly attributable to the withdrawal.
- 4.12 Section 108(2A)(a) provides that where planning permission of a prescribed description granted by a development order is withdrawn by the issue of directions under powers conferred by that order, compensation is only payable if an application for development formerly permitted by that order is made within 12 months of the directions taking effect.
- 4.13 Subsections (3B)(a) and (3C) of Section 108 of the Town and Country Planning Act 1990 provide that where planning permission granted by a development order is withdrawn, there will be no entitlement to compensation where the permission was for development of a “prescribed description”, is withdrawn in the prescribed manner and notice of the withdrawal is published in the “prescribed manner” not less than 12 months and no more than the prescribed period before the withdrawal took effect.
- 4.14 The purpose of the Town and Country Planning (Compensation) (Wales) Regulations 2014 is to add Part 8 Class E (refuse and cycle stores associated with industrial and warehouse buildings), Part 41 (offices) and Part 42 (shops, financial or professional services) of Schedule 2 to the GPDO to the existing description of “prescribed development” for the purposes of paragraphs (2A) (a) and (3C) (a) of section 108 of the Town and Country Planning Act.
- 4.15 The effect of the additions is that if permitted development rights provided by Parts 8 Class E, 41 or 42 of the GPDO are withdrawn, section 108(2A)(a) has the effect outlined in paragraph 4.12. above in relation to those permitted development rights. Further, if those permitted development rights are withdrawn in accordance with the requirements outlined in paragraph 4.13 – there is no entitlement to compensation under section 108.
- 4.16 No other change is made to the substance of the existing provisions in the Town and Country Planning (Compensation) (Wales) (No.2) Regulations 2012, which are consolidated in these Regulations.

5. Consultation

- 5.1 Details of the consultation exercise are included in the Regulatory Impact Assessment.

