



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

ADRODDIAD GAN Y PWYLLGOR DEDDFAU LEGISLATION COMMITTEE REPORT

**The Town and Country Planning (General Development Procedure) (Amendment)
(Wales) Order 2002**

This introduces a requirement for planning applications for certain types of telecommunications development to be accompanied by a declaration that the apparatus complies with specified radiation standards.

Standing Order 11.5

Points to Consider

1. As there is no existing provision which makes it unlawful to install or operate antennae which do not comply with the guidelines referred to in the inserted article 5A(3), a query may arise as to the powers under which the present order is to be made, given that it has the effect of preventing the installation and operation (by making it impossible to apply for planning permission) of non-compliant apparatus. It may be arguable that the powers under which the order is made relate solely to the procedural aspects of applications for, and the granting of, planning permission and do not allow the imposition of prohibitions on the making of applications for certain types of development.

Observations Received

2. Observations have been received from and on behalf of the Minister as set out in the Annex to this report. These observations make the following points –

- (a) It is stated that the main powers under which the order is proposed to be made are sections 59, 65 and 74 of the Town and Country Planning Act 1990.
- (b) In respect of section 59, specific reference is made to subsection (2)(b) which enables the Assembly, by order, to provide for the granting of planning

permission by the local planning authority “in accordance with the provisions of the order”.

- (c) Section 62 is cited as empowering the Assembly to prescribe the “manner” in which applications for planning permission are to be “granted” (sic) and the evidence required to verify them.
- (d) Reference is made to section 65(3) under which a development order may require an applicant to certify, in such form as may be prescribed, or to provide evidence, that any requirements of the order have been satisfied.
- (e) In respect section 74(1) the observations refer to the opening wording which allows provision to be made “regulating the manner in which applications for planning permission to develop land are to be dealt with”.
- (f) It is submitted that the order –
 - “deals with the form and manner of making an application for planning permission”, and “requires an application to be accompanied by certain information and prescribes the evidence which has to be furnished in support of the application.”.
- (g) Reference is made to the precedent of a similar provision in Scotland, and to consultations which have taken place with the telecommunications industry.

Conclusions

3. In relation to 2(b) above the Assembly is invited to consider the possibility that section 59(2)(b) might be said to be insufficiently wide to allow provision to be made whereby planning permission can only be granted for development which meets certain requirements, given that the overall scheme of section 59 is a provision which allows the Assembly to provide for the granting of planning permission by development order (i.e. the General Permitted Development Order) or, in respect of all other development, by application to the local planning authority in accordance with the provisions of the order (the General Development Procedure Order).

4. In relation to 2(c) above, it is noted that section 62 is not one of the powers under which the proposed order would be made. It is not included in the citation of powers and is, indeed, a regulation making power not an order making power. Additionally, section 62 relates only to the manner in which an application is to be made and to the inclusion of particulars and verifying evidence as prescribed. Thus if regulations under section 62 had been proposed, consideration would still need to have been given to whether that power is

merely a procedural power rather than a power which can be used to prevent applications being made for certain types of development.

5. In relation to 2(d) above, the Assembly is invited to note that the proposed order is not requiring a declaration that “any requirements of the order have been satisfied” but a declaration that requirements of the EU Council recommendation have been satisfied.

6. In relation to 2(e) above, the Assembly is invited to consider whether, given the overall wording of section 74(1), it might be said that a power to regulate the manner in which planning applications are to be dealt with cannot necessarily be construed as a power to prevent the making of applications for certain types of development. The Assembly is, in particular, invited to note that provision restricting the granting of planning permission for certain types of development is specifically dealt with in paragraph (a) of section 74(1) where provision may be made by order enabling the Assembly to give directions restricting the grant of planning permission by the local planning authority. This is the provision, which has been made in article 14 of the General Development Procedure Order. It may thus be relevant to consider whether the restriction, which it is now sought to impose on the granting of planning permission should be exercised through the giving of a direction under article 14.

7. In relation to 2(f) above it is suggested that the Assembly does need to consider whether it might be said that whilst the order has the appearance of introducing a provision which merely concerns the procedural aspects of making a planning application, in reality it goes beyond that because the effect is to make it impossible to apply for planning permission for non-compliant apparatus.

8. The points made at 2(g) above are noted, and it is fully understood that the Assembly may consider that the Scotland precedent and the scrutiny which the Wales proposals have received from the telecommunications industry support the proposed interpretation of the relevant enabling powers. The Committee does, however, consider that the Assembly should be aware of the issues identified in this report. The only point to be added is that no issue would arise if, instead of requiring a declaration of compliance, the requirement was merely to submit a declaration indicating whether or not the development complied with the guidelines.

Mick Bates AM
Chair, Legislation Committee

25 June 2002

Annex
Observations Received on Behalf of the Minister

The Town and Country Planning (General Development Procedure) (Amendment)
(Wales) Order 2002

The issue which you raise, and which would lead you to advise the Committee to consider reporting to the Assembly under SO 11.5 that there is doubt whether the proposed order is within the Assembly's powers, is the use of powers which you see as relating solely to the procedural aspects of applications for granting planning applications for the purpose of, in effect, prohibiting certain kinds of development. You will remember that the order would require applications for planning permission for telecommunications antennae to be accompanied by a certificate of compliance with ICNIRP guidelines.

The main powers under which the order is proposed to be made are sections 59, 65 and 74 of the Town and Country Planning Act 1990. These are very wide and expressly include power :

to "provide for the granting of planning permission by the local planning authority.....on application to the authority *in accordance with the provisions of the order*". (s. 59(2)(b))

- to prescribe the "manner" in which applications for planning permission are to be granted and the evidence required to verify them (s.62)
- to "require an applicant for planning permission to certify, in such form as may be prescribed by the order, or to provide evidence, that any requirements of the order have been satisfied." (s. 65(3))
- for "regulating the manner in which applications for planning permission to develop land are to be dealt with". (s. 74(1))
- The proposed order deals with the form and manner of making an application for planning permission. It requires an application to be accompanied by certain

information and prescribes the evidence which has to be furnished in support of the application. These provisions fall within the powers set out above.

The proposed order follows the precedent set by the Town and Country Planning (General Development Procedure) (Scotland) Amendment Order 2001 (SSI 2001/245) made under sections 30, 32 and 275 of the Town and Country Planning (Scotland) Act 1997 (1997 c.8). Sections 30 and 32 are identical in substance to sections 59 and 62 of the Town and Country Planning Act 1990.

The proposal has been the subject of extensive consultation with the telecommunications industry, who already accept a voluntary obligation to meet the standard in question. Whilst it is right to say that they would prefer to keep the status quo, they are fully aware of what is proposed and of the Scottish precedent and have not raised any legal objections to the proposed provision.

Having carefully considered the matters which you raise, Planning Division therefore intend to proceed with the proposed order in its original form.

Sue Essex AM

Gweinidog dros yr Amgylchedd
Minister for Environment

Our ref: SE/00933/02

19 JUN 2002



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Mr Mick Bates AM
Chair
Legislation Committee
The National Assembly for Wales
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19 June 2002

Dear Mick

Thank you for your letter of 29 May 2002 enclosing the Legislation Committee's draft Report on The Town and Country Planning (General Development Procedure) (Amendment) (Wales) Order 2002 (GDPO) (LC492).

I can confirm that there is no existing provision which makes it unlawful to install or operate antennae which do not comply with the guidelines referred to in the inserted Article 5A.(3). I note that this particular point was raised in paragraph 10(a) of the draft Report and apologise that this was not addressed in the observations (as contained in the Annex to the draft Report) which you received on my behalf. There is, however, an explanation for this.

My officials say that a draft of the Order (and the two others associated with it) was submitted to the Legal Adviser to the Legislation Committee in advance of the laying of the Order. This enabled the Legal Adviser to give an informal opinion, which he did by means of draft reports seeking my comments. In the case of the other two orders, all the points raised (other than those which your Report to the Assembly accepts are matters of policy) were, as you know, accepted and the drafts laid amended to meet the points raised. In the case of this (GDPO) Order, the immediate response to the Legal Adviser's informal view was an informal response by the Office of the Counsel General (OCG). It was not intended, at that stage, to be the formal response on my behalf to a proposed formal report by the Committee. It did not, therefore, expressly refer to the point in question (although it was implicit that there was no existing provision making it unlawful to operate antennae which do not comply with the guidelines, and was interpreted by the Legal Adviser in that way).

With a view to saving time, the Legal Adviser suggested that OCG's informal response to his informal response to the original draft could stand as the formal response on my behalf to the formal proposed report of the Committee. This was agreed, but it meant that the document treated as the formal response on my behalf had not been drawn up specifically for that purpose and hence had not been drafted to ensure that every point was fully and expressly



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covered. The fact that the particular query you now raise was not expressly dealt with is, therefore, a by-product of the efforts made by officials to avoid duplication and to save time and effort, and was not due to any reluctance to address the issue raised by the Committee.

Since the practice of agreeing that an advance informal response, where appropriate, can stand as the formal response required under Standing Order 11.4 is a useful one, note has now been made of the need to ensure that any such informal response is drafted with that possibility on mind, so as to avoid the kind of misunderstanding which has arisen.

Ben Mitchell

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