

Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment) (No.3) (Wales) Order 2020

This Explanatory Memorandum has been prepared by the Planning Directorate and is laid before Senedd Cymru 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) (No.3) (Wales) Order 2020. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Housing and Local Government

20 November 2020

PART 1

1. Description

- 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) (No. 3) (Wales) Order 2020 (“the Amendment Order”) amends Schedule 2 to the GPDO by inserting a new Part 6A (community growing spaces) to permit the erection, extension, replacement or alteration of storage sheds and greenhouses on community growing spaces of at least 62 square metres. The permitted development is subject to limitations which are also set out in the new Part 6A.
- 1.3 The Amendment Order also amends article 4 of, and Part 24 (development by electronic communications code operators) of Schedule 2 to, the GPDO to implement Article 57(1) of EU Directive 2018/1972 of the European Parliament and Council establishing the European Electronic Communications Code (recast) as they relate to the planning system by:
 - 1.3.1 reducing the limitations on development consisting of the installation, alteration or replacement of all small cell systems;
 - 1.3.2 removing the limitations on development consisting of the installation, alteration or replacement of Regulation 2020/1070 small cell systems outside protected land or World Heritage Sites. Regulation 2020/1070 small cell systems are small cell systems to which Commission Implementing Regulation (EU) 2020/1070 applies and which meet the conditions and requirements set out in that Regulation;
 - 1.3.3 making changes to article 4 of the GPDO so that a local planning authority or the Welsh Ministers cannot issue a direction restricting the scope of permitted development rights so far as the development consists of the installation, alteration or replacement of a Regulation 2020/1070 small cell system.
- 1.4 The Amendment Order makes other amendments to Part 24 of Schedule 2 to the GPDO including:
 - 1.4.1 increasing the number of antenna systems which can be installed on certain buildings and structures from three to four;
 - 1.4.2 increasing the number of electronic communications code operators who can operate antennas systems on certain buildings and structures from three to four;
 - 1.4.3 excluding small cell systems and Regulation 2020/1070 small cell systems from the calculation of the number of antenna systems which can be installed and number of electronic communications

code operates who can operate, on certain building and instructions;

1.4.4 making minor drafting changes.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 None.

3. Legislative background

3.1 The powers to make the Amendment Order are in sections 59, 60, 61 and 333 of the Town and Country Planning Act 1990. 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.

3.2 The functions of the Secretary of State were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006. These powers are therefore now exercisable by the Welsh Ministers.

3.3 Section 333(5B) of the Town and Country Planning Act 1990 provides that the procedure for a statutory instrument which contains a development order is the negative resolution procedure.

3.4 Article 4(7) of the Amendment Order is made in exercise of powers in paragraph 1A of Schedule 2 to the European Communities Act 1972 ("the 1972 Act"). Paragraph 1A of Schedule 2 to the 1972 Act provides where subordinate legislation makes provision for a purpose mentioned in section 2(2) of the 1972 Act, the legislation contains a reference to a EU instrument, and it appears to the person making the legislation that it is necessary or expedient for the reference to be construed as a reference to that instrument as amended from time to time, the subordinate legislation may make express provision to that effect.

3.5 The 1972 Act was repealed by section 1 of the European Union (Withdrawal) Act 2018 ("the 2018 Act") with effect from exit day. "Exit day" is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal the 1972 Act continues to have effect with modifications until IP completion day by virtue of section 1A of the 2018 Act which was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 ("the 2020 Act"). "IP completion day" is defined in section 1A as 31 December 2020 at 11pm (the meaning given in section 39 of the 2020 Act).

- 3.6 The Amendment Order makes provision for a purpose mentioned in section 2(2) of the 1972 Act i.e. implementing an EU Obligation.

4. Purpose and intended effect of the legislation

Community Growing Spaces

- 4.1 Structures such as sheds and greenhouses are commonly located on allotments and other community growing spaces. Sheds are necessary for the storage of tools used in association with the working of the land and to provide shelter from the elements, whilst greenhouses play a significant role in ensuring the optimum conditions necessary for productive growth.
- 4.2 There are currently no permitted development rights for development on land used for community growing. Development therefore requires planning permission. Such applications when submitted to local planning authorities are often minor in scale and non-controversial.
- 4.3 The Wellbeing of Future Generations (Wales) Act 2015 sets out a clear obligation for public bodies to enable positive change that leads to a more resilient, secure and healthy Wales. The fresh, often organic fruit and vegetables grown on community growing sites make a contribution towards providing a more sustainable and secure food supply which in turn will work towards creating a healthier, happier and more sustainable Wales.
- 4.4 The purpose of the provisions in this Amendment Order is to grant permitted development rights for the erection, extension, replacement or alteration of storage sheds and greenhouses on community growing spaces, to support existing, and encourage new, community growing in Wales.
- 4.5 Providing community growers with freedom to undertake development without the need for planning permission will encourage greater use of the land, contributing towards the production of sustainable food and other produce.
- 4.6 These rights will be subject to certain limitations, such as maximum size and siting, designed to minimise amenity impacts on the wider environment, to protect watercourse/flood defences and to enable control over development in protected areas.

Development by electronic communications code operators

- 4.7 The delivery of a fast reliable mobile telecommunications network to all parts of Wales is essential to achieve Wales's digital connectivity goals, including areas not currently served by the market. In October 2017 the Welsh Government also published the Mobile Action Plan for Wales. The Plan identified a number of actions required to achieve national objectives

for digital connectivity, including the review of permitted development rights, and revision of telecoms policy in Planning Policy Wales.

- 4.8 The Planning System has an important role to play in supporting and enhancing digital connectivity, through national and local policy and through permitted development rights.
- 4.9 Permitted development rights for electronic communications code operators in Wales are set out in Part 24 of Schedule 2 to the GDPO. The Welsh Government's review of permitted development rights provided an opportunity to consider if the current provisions were fit for purpose and able to deliver the objectives set out in national strategy.
- 4.10 The Amendment Order amends Part 24 of the GDPO to omit the definition of "small antenna" and "small cell antenna" and for a new definition of "small cell system" is inserted. The definition of "small cell system" is based on the old definition of "small cell antenna" with amendment to include ancillary apparatus to clarify the extent of the permitted development rights. The definition of "small cell system" includes what were previously defined as "small antenna". It is considered that these two definitions are no longer needed and could lead to confusion.
- 4.11 In relation to these changes, the Amendment Order gives permitted development rights for small cell systems. This is subject to limitations and conditions which have been applied to help protect buildings and areas of natural and historic value. In particular, the numbers of systems are limited in conservation areas, World Heritage Sites and on dwellings to ensure that a building does not become visually cluttered with such equipment to its detriment. Where development is on Protected Land (which include land within a national park, an area of outstanding natural beauty and a conservation area or land within an SSSI) a Prior Approval process is in place so that a local planning authority can still determine if the siting and design of the installation is appropriate.
- 4.12 In addition to the above changes, the Amendment Order also increases the number of antenna systems (other than "dish antennas", "Regulation 2020/1070 small cell systems" or "small cell systems") which can be installed on certain buildings and structures from three to four. It also increases the number of electronic communications code operators who can operate antenna systems (other than "dish antennas", "Regulation 2020/1070 small cell systems" or "small cell systems") on certain buildings and structures from three to four.
- 4.13 The purpose of these provisions is to increase the flexibility of the permitted development rights regime for electronic communication code operators to enable the further roll-out of mobile coverage across Wales. The changes in paragraph 4.11 also implement paragraph 1 of article 57(1) of EU Directive 2018/1972 as they reduce the limitations on permitted development rights in relation to the installation, alteration or

replacement of small cell systems. It is considered that the definition of a small cell system covers the definition of a Small Area Wireless Access Point (SAWAP) for the purposes of implementing the EU Directive.

- 4.14 The changes made by the Amendment Order also implement paragraph 2 of Article 57(1) of EU Directive 2018/1972 by giving increased permitted development rights to development consisting of the installation, alteration or replacement of Regulation 2020/1070 small cell systems except for certain development on Protected Land or within a World Heritage Site. Article 4 of the GDPO is also being amended so that Article 4 Directions cannot be made by planning authorities seeking to amend these permitted development provisions to require planning permission for these types of small cell systems. It is considered that removing permitted development rights for Regulation 2020/1070 small cell systems would be inconsistent with paragraph (2) of Article 57(1) of the EU Directive.

5. Consultation

Community Growing Spaces

- 5.1 The permitted development rights for allotment holders' consultation document was published on 22 November 2019 and was open for responses until 28 February 2020. It sought views on proposals to amend the GDPO by introducing new permitted development rights for the erection of structures on allotments.
- 5.2 In total, 63 responses were received to the consultation. The respondents represented a number of different interest groups, just under half of which were individual members of the public.
- 5.3 There was broad agreement from stakeholders to all of the proposals in the consultation. The provisions set out in the Amendment Order take forward these proposals, as amended to account for feedback received through the consultation. This includes introducing the ability for smaller plots to undertake development in the form of either a shed or a glasshouse and ensuring the permitted development rights apply to modern forms of community growing sites and not be restricted to traditional, regulated allotments. Clarity is also provided in respect of the planning status of polytunnels, which should be considered a greenhouse for the purpose of permitted development rights introduced by this Amendment Order.
- 5.4 A summary of the consultation responses is available on the Welsh Government website - <https://gov.wales/permitted-development-rights-allotment-holders>.

Development by electronic communications code operators

- 5.5 A consultation ran from 31 May 2018 to 28 September 2018 on a wide ranging set of proposals regarding the consolidation and amendment of

the Town and Country Planning (Use Classes) Order 1987 and the GPDO. A total of 148 responses were received. We consulted on changes to Part 24, Development by Electronic Communications Code Operators (Wales) Provisions relating to mast heights and widths were enacted through the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2019 which came in to force 1 April 2019.

- 5.6 In the same consultation we asked for views on the extent of permitted development rights on the deployment of 'small antenna' and 'small cell system'; Upon further consideration it has not been thought necessary to keep the two separate definitions as they were largely repetitive. It was considered the term 'small cell system' was a more accurate, encompassing term. Notwithstanding this, the equipment covered by this definition, and hence the policy intent, has not changed.
- 5.7 In the context of EU Directive 2018/1972 which states that the deployment of SAWAPs should not be unduly restricted, we consider it was pertinent to implement our proposals for small cell systems. It is considered that small cell systems and SAWAPs have the same characteristics for the purposes of implementation of the EU Directive. In the consultation there was broad agreement for our proposals to relax the limitations on small cell systems with provisions in place to protect the most sensitive sites and buildings of historical and natural value.
- 5.8 Not all of the 2018 consultation proposals have been taken forward in their entirety. Responses identified Conservation Areas as a particular additional area in need of special consideration within the subset of 'protected areas due' to the potential impact high numbers of small cell systems on a building could have to the sensitive character of these areas.
- 5.9 Cadw also indicated in their response that World Heritage Sites had not been addressed in our consultation proposals and should be considered for protection alongside Conservation Areas. Given the importance of World Heritage Site status nationally and globally it is considered this should be recognised so that buildings or structures within such sites are afforded the same protection as Conservation Areas.
- 5.10 A summary of the consultation responses to the relevant consultation questions concerning small cell systems is available on the Welsh Government website - <https://gov.wales/subordinate-legislation-consolidation-and-review>.

PART 2 – REGULATORY IMPACT ASSESSMENT

The Town and Country Planning (General Permitted Development) (Amendment) (No. 3) (Wales) Order 2020

1. Permitted Development Rights for community growing spaces

Options

1.1 The following options are considered:

Option 1: Do nothing – Planning permission will continue to be required for all development on allotments and other community growing spaces.

Option 2: Make the legislation – Grant permitted development rights for the erection, extension, alteration or replacement of storage sheds and greenhouses on community growing spaces.

1.2 Option 2 is the favoured option as it will provide greater freedoms to community growers and remove small, uncontroversial planning applications from the system, releasing local planning authority resources.

Cost and Benefits Analysis

1.3 The sectors most likely to be affected by the proposals include:

- Community growers – Those who use, or would potentially use, community growing spaces, such as allotments, and would benefit from new permitted development rights.
- Local Planning Authorities (LPA) – Wales has 25 Local Planning Authorities who determine applications for planning permission. 22 of these are the unitary authorities, with the national park authorities, who provide their own town planning function, accounting for the remaining 3.
- The general public – Those who may have an interest in the development of land within their area.

1.4 The following cost and benefit analysis has been undertaken for each of the above sectors:

Cost Analysis for Option 1: Do nothing

Community growers

1.5 This is the baseline option and as such there are no additional costs associated with this option. Planning permission would still be required for the erection of sheds and greenhouses on community growing spaces.

- 1.6 The planning fee for a planning application is currently £85.00. There will be associated costs for the preparation of the necessary supporting information, such as plans. A benchmarking study undertaken in England¹ estimated the total cost of submitting a householder development, which is of comparable scale, varied from £150 to £2,900. Given the scale of development proposed, it is likely that the costs associated for community growers would be at the lower end of this range. A number of variables can have an impact on these costs, including the use of an agent and the savings incurred by submitting applications via Planning Applications Wales (this limits printing costs). The Welsh Government believe the costs identified in this study are representative of a) the costs likely to be incurred in Wales and b) the costs likely to be incurred by community growers for an application for this scale of development.
- 1.7 The need for planning permission, and the costs involved, may dissuade people from taking on allotments and other community growing spaces, particularly if their intend use of the land requires a storage shed and/or a greenhouse.

Local Planning Authorities

- 1.8 LPAs will continue to validate, process and determine applications for planning permission. Each application will need to be publicised and a site visit undertaken. The application will be determined in accordance with the relevant LPA scheme of delegation which may entail the application being determined by the planning committee. The planning fee paid is intended to offset the LPAs costs.

General public

- 1.9 No direct or indirect costs.

Benefit Analysis for Option 1 – Do nothing

Community Growers

- 1.10 There are no direct or indirect benefits for community growers. The existing requirement for planning permission for the erection of sheds and greenhouses will remain.

Local Planning Authorities

- 1.11 LPAs retain the planning application fees associated with any applications made.

¹ Benchmarking the costs to applicants of submitting a planning application.
<https://webarchive.nationalarchives.gov.uk/20090903233426/http://www.communities.gov.uk/documents/planningandbuilding/pdf/benchmarkingcostsapplication.pdf>

General public

- 1.12 Those with an interest in the proposed development will continue to be able to participate in the planning application process by making representations to the LPA through the statutory publicity period. Comments raised during this process will be taken into account by the LPA as part of the decision-making process.

Option 2 - Make the legislation

Description

- 1.13 Option 2 would result in legislation being made that introduces permitted development rights on land used for community growing for the erection, extension, alteration and replacement of structures, specifically sheds and greenhouses, subject to limitations.

Cost Analysis for Option 2: Make the legislation

Community growers

- 1.14 The proposals are de-regulatory and as such are expected to result in cost-savings. The fees associated with the submission of a planning application, set out in paragraph 1.6, would in effect be saved through planning permission being granted automatically by the GPDO.

Local Planning Authorities

- 1.15 There will be reduction in planning application fee income, however, this is offset by the LPA not incurring the costs involved in processing those applications. In many circumstances, the application fee does not cover the cost of determining a planning application.
- 1.16 Furthermore, whilst performance data gathered from local planning authorities as part of the Development management quarterly survey does not differentiate applications made on allotments (or other community growing spaces), anecdotal evidence suggests that the number of applications submitted are low. The loss of planning fee income is not therefore considered to have a notable impact upon overall LPA fee income.

General public

- 1.17 No direct or indirect costs.

Benefit Analysis for Option 2

Community growers

- 1.18 Those wishing to erect a structure on their growing space will make savings on planning application fees (currently £85.00) and associated administration costs incurred for the preparation and submission of a planning application, as outlined in paragraph 1.6.

Local Authorities

- 1.19 The reduced number of minor, non-controversial planning applications needing to be determined will allow LPAs to reallocate valuable staff resources to other planning applications which may have more complex and significant impacts.

General public

- 1.20 No direct or indirect benefits.

2. Development by electronic communications code operators

- 2.1 The following options are considered:

Option 1: Do nothing – Legislation remains the same and the existing permitted development rights apply.

Option 2: - Make the legislation – Gives permitted development rights for small cell systems (subject to limitations) and removes permitted development rights restrictions and limitations on Regulation 2070/1070 small cell systems outside protected land or World Heritage Sites. Removes the ability for planning authorities and the Welsh Ministers to make changes to permitted development rights through Article 4 directions.

Cost and Benefits Analysis

- 2.2 The sectors most likely to be affected by the proposals include:
- Mobile infrastructure operators wishing to install new or enlarged mobile telecommunication equipment.
 - LPAs who determine applications for planning permission.
 - The general public who will potentially benefit from increased mobile coverage but may also be impacted by less restrictive / unrestricted small cell system development in their communities.
- 2.3 The following cost and benefit analysis has been undertaken for each of the above sectors:

Cost Analysis for Option 1: Do nothing

Business

- 2.4 The requirement for planning permission for small cell system will continue, resulting in an ongoing cost to the mobile industry to roll out their networks. This includes the planning application fee and associated costs for the preparation of the necessary supporting information, such as plans.
- 2.5 The requirement for planning permission may also deter some operators from installing small cell systems, to the detriment of communities in the vicinity who will not benefit from greater mobile coverage.

Local Planning Authorities

- 2.6 LPAs will continue to validate, process and determine applications for planning permission for small cell systems and telecommunications equipment generally. Each application will need to be publicised and a site visit undertaken. The application will be determined in accordance with the relevant LPA scheme of delegation which may entail the application being determined by the planning committee. The planning fee paid is intended to offset the LPAs costs.

General Public

- 2.7 There are no direct costs to the public.

Benefit Analysis for Option 1 – Do nothing

Businesses

- 2.8 There are no indirect or direct benefits for businesses; this will maintain the existing situation.

Local Planning Authorities

- 2.9 LPAs retain the associated planning application fee for small cell systems which require planning permission and have more control over the development.

General Public

- 2.10 There will be a greater involvement of the public through the ability to comment directly on the principle of planning permission for those small cell systems which currently need planning applications.

Cost Analysis for Option 2: Make the legislation

Businesses

- 2.11 There are no additional direct or indirect costs to businesses. The proposed legislation is de-regulatory and expected to result in cost-savings to businesses.

Local Planning Authorities

- 2.12 There will be reduction in planning application fee income, however, this is offset by the LPA not incurring the costs involved in dealing with those applications. In many circumstances, the application fee does not cover the cost of determining a planning application.

General Public

- 2.13 There are no additional direct or indirect costs to the general public. There will be less scope to challenge in principle new or enlarged equipment, however the ability to make comments on siting and design issues will remain through the prior approval process in protected areas.

Benefit Analysis for Option 2

Business

- 2.14 Mobile operating companies will not need to apply for planning permission for a larger range of small cell systems in different situations. Narrowing discussions in protected areas around siting and design mean that the principle of the development will not need to be discussed. Increased mobile coverage will also enable businesses to more readily access communication networks.
- 2.15 Moving from full planning permission to permitted development rights could reduce the time taken to go through the necessary planning processes as deemed consent is given after 8 weeks. This reduces uncertainty in the industry.

Local Planning Authorities

- 2.16 The reduced number of planning applications needing to be determined will allow LPAs to reallocate valuable staff resources to other planning applications which may have more complex and significant impacts. LPAs may experience a rise in the number of environmental complaints due to impact on amenity.

General Public

- 2.17 The general public will benefit from a potential increase in mobile coverage and the wider economic and social benefits arising from greater connectivity.

3. Summary and Preferred Option

Community growing spaces

- 3.1 Option 2 is the favoured option as it will remove, minor non-controversial applications from the planning system whilst likely encouraging the use and expansion community growing spaces, and the subsequent production of sustainable produce.

Development by electronic communications code operators

- 3.2 Option 2 is the favoured option as it will result in a more enabling regime for the installation of telecommunication infrastructure.

4. Competition Assessment

- 4.1 A competition filter test has been applied to the proposed amendments. The proposals are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.

5. Post implementation review

- 5.1 Regular meetings take place between the Welsh Government and LPAs. This enables discussion regarding any issues or concerns with the arrangements introduced by the new secondary legislation.
- 5.2 The Welsh Government also welcomes any feedback from the public and other stakeholders which is taken into account when formulating future policy development.