

2014 No. 2692 (W. 267)

**TOWN AND COUNTRY
PLANNING, WALES**

**The Town and Country Planning
(General Permitted Development)
(Amendment) (Wales) (No. 2)
Order 2014**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418) (“the 1995 Order”) in relation to Wales. Article 3 of and Schedule 2 to the 1995 Order confer permitted development rights in respect of certain development. Where such rights apply, no specific application for planning permission is required.

Article 2 amends Part 24 (development by electronic communications code operators (Wales)) of Schedule 2 to the 1995 Order.

Class A of Part 24 permits certain development by electronic communications code operators provided it does not fall within A.1 (development not permitted) and subject to any relevant conditions and limitations in A.2 and A.3.

Article 2(2) of this Order updates the reference to an operator’s licence to reflect changes in the Communications Act 2003.

Limitations and conditions on the grant of planning permission include, for example, excluding the Class A permission from application to protected land in certain cases. Protected land comprises sites of special scientific interest and categories of land identified in article 1(5) of, and Part 2 of Schedule 1 to, the 1995 Order (National Parks, areas of outstanding natural beauty, conservation areas, countryside areas of natural beauty and amenity). Other permissions may be subject to the approval of the local planning authority on siting and appearance, a process referred to as “prior approval”.

Article 2(3) inserts a new provision to allow existing freestanding masts to be altered or replaced to become masts up to 20 metres high and up to a third wider than the existing mast. This does not apply on article 1(5) land nor on a site of special scientific interest, and is subject to prior approval on other land by virtue of paragraph A.2(4) of Class A. On width, at any given height, the new or upgraded mast may be no more than a third wider than the original mast at the same height.

Article 2(4) removes small cell antenna from paragraph A.1(g)(i). This means that the limitation in that paragraph does not apply to small cell antenna.

Article 2(5) to (8) amends provisions in Class A to allow larger aggregate sizes of all dish antennas and more antenna systems to be attached to certain buildings and structures. The new rules vary according to the height of the building or structure, with larger aggregate sizes for dishes and more antenna systems allowed above 15 metres.

Article 2(9) makes provision consequential on article 2(10) and (13).

Article 2(10) inserts a new provision to permit up to three additional dish antennas and three non-dish antennas, subject to size limits, to be attached to existing electronic communications apparatus attached to buildings or structures (including masts) on article 1(5) land. A definition added by article 2(19)(c) clarifies that the apparatus must already be sending and receiving communications. This new permitted development right is excepted from paragraph A.1(i) of Class A which otherwise substantially limits the development of antenna on article 1(5) land.

Article 2(11) and (12) amend provisions to clarify that current size limits for radio equipment housing are in one case cumulative and in another case applicable to single development proposals. Article 2(14) includes a consequential amendment to paragraph A.2(4) of Class A.

Article 2(13) inserts a new provision to allow up to two of a new sort of antenna (“small cell antenna”) to be attached to buildings and other structures (other than dwellinghouses or within the curtilage of a dwellinghouse), as long as they are not on a site of special scientific interest. This development is permitted on article 1(5) land by virtue of an exception to the general rule at paragraph A.1(i) of Class A, but subject to prior approval by virtue of paragraph A.2(4)(a) of Class A. Article 2(19)(c) inserts a new definition of “small cell antenna”, which includes size restrictions.

Article 2(14) inserts a new version of paragraph A.2(4) of Class A. Changes include: increasing the height at which antennas attached to buildings or

structures (other than masts) are required to go through the prior approval process; clarifying that prior approval is only required when any single development of radio equipment housing has a volume in excess of 2.5 cubic metres; and removing the need for prior approval for development ancillary to radio equipment housing.

Article 2(15) provides that, in relation to article 1(5) land, the construction, installation or replacement of telegraph poles, cabinets or lines for fixed-line broadband services will not require prior approval under paragraph A.3 of Part 24. In order to rely on this change to the permitted development rights, development must be completed before 30 May 2018 and the conditions introduced by article 2(15) must be complied with. The conditions are:

- in the case of development in National Parks and areas of outstanding natural beauty, one month's notice of the proposed development is to be given to the Natural Resources Body for Wales and where any part of the development is in a National Park, to the county or county borough council for the area;
- cabinets must be black (not matt black), green or another colour approved by the local planning authority;
- telegraph poles must match the nearest existing telegraph pole which has planning permission unless otherwise approved by the local planning authority.

New definitions relating to this provision are inserted in article 2(19).

Article 2(16) inserts a requirement for developer contact details to be submitted with an application for prior approval.

Article 2(17) excepts development comprising small cell antennas from the existing requirement on a developer to submit a written declaration of compliance with guidelines of the International Commission on Non-ionising Radiation Protection with an application for prior approval under Class A.3(4).

Article 2(18) inserts a new provision into the prior approval procedures at paragraph A.3 of Class A, to clarify that where minor amendments to development proposed in a prior approval application are agreed between the developer and the local planning authority, a new application for prior approval is not required.

Article 2(19) inserts new, and makes consequential amendments to, definitions.

Article 2(20) inserts a new provision which clarifies that where Class A gives planning permission for the development of electronic communications apparatus, that permission extends to certain development ancillary to and reasonably required for the purpose of that apparatus. The “reasonably required” test ensures that such ancillary development relates to the particular apparatus being developed and is not for the purpose of future anticipated development. This interpretative provision does not extend to development on a site of special scientific interest.

A regulatory impact assessment has been prepared in relation to this Order. Copies may be obtained from Planning Division, the Welsh Government at Cathays Park, Cardiff, CF10 3NQ and on the website at <https://www.wales.gov.uk>.

2014 No. 2692 (W. 267)

**TOWN AND COUNTRY
PLANNING, WALES**

**The Town and Country Planning
(General Permitted Development)
(Amendment) (Wales) (No. 2)
Order 2014**

Made 29 September 2014

Laid before the National Assembly for Wales
9 October 2014

Coming into force 7 November 2014

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 59, 60, 61 and 333 of the Town and Country Planning Act 1990(1) and now exercisable by them(2), make the following Order:

Title, commencement and application

1.—(1) The title of this Order is the Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No. 2) Order 2014 and it comes into force on 7 November 2014.

(2) This Order applies in relation to Wales.

(1) 1990 c. 8; to which there are amendments not relevant to this Order.

(2) The functions of the Secretary of State under sections 59, 60, 61 and 333 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).

Amendments in relation to development by electronic communications code operators

2.—(1) Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995⁽¹⁾ (development by electronic communications code operators (Wales)) is amended as follows.

(2) In paragraph A (permitted development), for “in accordance with the operator’s licence”, substitute “in accordance with the electronic communications code”.

(3) For paragraph A.1(b) (alteration or replacement of apparatus other than on a building or other structure) substitute—

“(b) in the case of the alteration or replacement of apparatus already installed, (other than on a building or structure)—

(i) where the apparatus is a mast which is not on article 1(5) land or on any land which is, or is within, a site of special scientific interest—

(aa) the mast, excluding any antenna, would when altered or replaced either exceed a height of 20 metres above ground level or at any given height exceed the width of the existing mast at the same height by more than one third; or

(bb) where antenna support structures are altered or replaced, the combined width of the mast and any antenna support structures would exceed the combined width of the existing mast and any antenna support structures by more than one third;

(ii) in all other cases, the apparatus, excluding any antenna, would, when altered or replaced exceed the greater of—

(aa) the height of the existing apparatus; or

(bb) a height of 15 metres above ground level.”

(1) S.I. 1995/418. Relevant amendments were made by S.I. 2002/1878, S.I. 2003/2155 and S.I. 2004/945.

(4) In paragraph A.1(g)(i) (location on walls or roof slopes facing a highway) at the start insert “in the case of antennas other than small cell antennas,”.

(5) In paragraph A.1(g)(ii) (size of dish antennas below 15 metres), for “1.5 metres” substitute “4.5 metres”.

(6) For paragraph A.1(g)(iii) (number of antenna systems below 15 metres), substitute—

“(iii) in the case of antennas other than dish antennas, the development (other than the installation, alteration or replacement of one small antenna or a maximum of two small cell antennas) would result in the presence on the building or structure of—

(aa) more than three antenna systems; or

(bb) any antenna system operated by more than three electronic communications code operators; or”.

(7) In paragraph A.1(h)(i) (size of dish antennas at or above 15 metres), for “3.5 metres” substitute “10 metres”.

(8) For paragraph A.1(h)(ii) (number of antenna systems at or above 15 metres), substitute—

“(ii) in the case of antennas other than dish antennas, the development (other than the installation, alteration or replacement of a maximum of two small antennas or two small cell antennas) would result in the presence on the building or structure of—

(aa) more than five antenna systems; or

(bb) any antenna system operated by more than three electronic communications code operators; or”.

(9) In paragraph A.1(i) (antenna development on article 1(5) land or on a site of special scientific interest)—

(a) omit “(other than the installation, alteration or replacement of one small antenna on a dwellinghouse or within the curtilage of a dwellinghouse)”;

(b) at the end, add “or is development described in the introductory words to any of paragraphs (ia), (m), (n), or (p) and which is allowed by the respective sub-paragraphs which follow those introductory words”.

(10) After paragraph A.1(i), insert—

“(ia) in the case of the installation of an additional antenna on existing electronic communications apparatus on a building or structure (including a mast) on article 1(5) land—

(i) in the case of dish antennas, the size of any additional dishes would exceed 0.6 metres, and the number of additional dishes on the building or structure would exceed three; or

(ii) in the case of antennas other than dish antennas, any additional antennas would exceed 3 metres in height, and the number of additional antennas on the building or structure would exceed three;”.

(11) In paragraph A.1(l)(ii) (size of radio equipment housing), before “development”, in each place it occurs, insert “cumulative volume of such”.

(12) In paragraph A.1(l)(iii) (size of radio equipment housing on article 1(5) land or on a site of special scientific interest), before “development”, in the first place it occurs, omit “the” and insert “any single”.

(13) At the end of paragraph A.1, add—

“(p) in the case of the installation, alteration or replacement of a small cell antenna on a building or structure:

(i) the building or structure is a dwellinghouse or within the curtilage of a dwellinghouse;

(ii) the building or structure is on any land which is, or is within, a site of special scientific interest; or

(iii) the development would result in the presence on the building or structure of more than two such antennas.”

(14) For paragraph A.2(4) (prior approval), substitute—

“(4) Except in relation to development described in paragraph (4A), class A development on—

(a) article 1(5) land or land which is, or is within, a site of special scientific interest, or

(b) any other land and consisting of the construction, installation, alteration or replacement of—

- (i) a mast;
- (ii) an antenna on a building or structure (other than a mast) where the antenna (including any supporting structure) would exceed the height of the building or structure at the point where it is installed or to be installed by 6 metres or more;
- (iii) a public call box;
- (iv) radio equipment housing, where the volume of any single development is in excess of 2.5 cubic metres,

is permitted subject, except in case of emergency, to the conditions set out in A.3.”

(15) After paragraph A.2(4) (prior approval), insert—

“(4A) Class A development on any article 1(5) land which consists of the construction, installation, alteration or replacement of a telegraph pole, cabinet or line, in connection with the provision of fixed-line broadband, is permitted, subject to the conditions set out in paragraph (4B) and provided that the development is completed on or before 30th May 2018.

(4B) The conditions are—

- (a) the developer must give one month’s notice, in writing, where the development, or any part of it, is in—
 - (i) a National Park – to the relevant county or county borough council and the Natural Resources Body for Wales;
 - (ii) an area of outstanding natural beauty⁽¹⁾ – to the Natural Resources Body for Wales;
- (b) the notice to be given under subparagraph (a) must state the developer’s intention to install electronic communications apparatus, describe the apparatus and identify the location where it is proposed to install it;
- (c) any cabinet must be:
 - (i) green;
 - (ii) black (except matt black); or

(1) S.I. 1995/418. Relevant amendments were made by S.I. 2002/1878, S.I. 2003/2155 and S.I. 2004/945.

(iii) a colour which has the written approval of the local planning authority prior to the commencement of the development;

(d) any telegraph pole must have the same appearance and be made of the same material as the nearest existing⁽¹⁾ telegraph pole to it which has planning permission, unless an alternative appearance or material has been approved in writing by the local planning authority prior to the commencement of the development.”

(16) After paragraph A.3(4)(a) insert—

“(aa) by the developer's contact address, and the developer's email address if the developer has one; and”.

(17) In paragraph A.3(4)(b), after “antennas,” insert “unless they are all small cell antennas,”.

(18) After paragraph A.3(8), insert—

“(8A) The agreement in writing referred to in paragraph (8) requires no special form of writing, and in particular there is no requirement on the developer to submit a new application for prior approval in the case of minor amendments to the details submitted with the application for prior approval.”

(19) In paragraph A.4 (interpretation)—

(a) for the definition of “antenna system”, substitute—

““antenna system” means a set of antennas installed on a building or structure and operated in accordance with the electronic communications code;”;

(b) in the definition of “development ancillary to radio equipment housing”, at the end add—

“, and except on any land which is, or is within, a site of special scientific interest includes—

(i) security equipment;

(ii) perimeter walls and fences; and

(iii) handrails, steps and ramps;”;

(c) in the appropriate place, insert—

““electronic communications apparatus”,
“electronic communications code” and

(1) See article 1(2) of the Town and Country Planning (General Permitted Development) Order 1995 for definition of “existing”.

“electronic communications service” have the same meaning as in the Communications Act 2003⁽¹⁾”;

““existing electronic communications apparatus” means electronic communications apparatus which is already sending or receiving electronic communications;”;

““existing mast” means a mast with attached electronic communications apparatus which existed and was sending or receiving electronic communications on 6 November 2014;”;

““fixed-line broadband” means a service or connection (commonly referred to as being 'always on'), via a fixed-line network, providing a bandwidth greater than narrowband;”;

““narrowband” means a service or connection providing data speeds up to 128 k bit/s;”;

““National Park” means any area designated and confirmed as such under section 5(3) of the National Parks and Access to the Countryside Act 1949⁽²⁾”;

““relevant county council or county borough council” means any county council or county borough council of the principal area established under section 21 of the Local Government Act 1972⁽³⁾ whose area includes the part of the National Park where the development is situated;”;

““small cell antenna” means an antenna which—

- (i) operates on a point to multi-point or area basis in connection with an electronic communications service;

(1) 2003 c. 21. *See* sections 151, 106(1) and 32 respectively.

(2) 1949 c. 97. Section 5(3) was amended by section 105(1) of, and paragraph 10(a) of Schedule 11 to, Part 1 of the Natural Environment and Rural Communities Act 2006 (c. 16). *See* also section 4A of the 1949 Act which was inserted by section 190 of, and paragraph 1(4) of Schedule 8 to, the Environmental Protection Act 1990 (c. 43) and was amended by section 105(1) of, and paragraph 9 of Part 1 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 and S.I. 2013/755 (W. 90).

(3) 1972 c. 70. Section 21 was substituted by section 2 of the Local Government (Wales) Act 1994 (c. 19) and amended by section 46 of, and paragraph 4 of Schedule 3 to the Local Government Act 2000 (c. 22), sections 34(7)(a) and 176(2) of, and Part B of Schedule 4 to, the Local Government (Wales) Measure 2011 (2011 nawm 4), section 74(1) of, and paragraphs 1 and 4 of Schedule 3 to, the Local Government and Public Involvement in Health Act 2007 (c. 28).

- (ii) may be variously referred to as a femtocell, picocell, metrocell or microcell antenna;
- (iii) does not, in any two dimensional measurement, have a surface area exceeding 5,000 square centimetres; and
- (iv) does not have a volume exceeding 50,000 cubic centimetres,

and any calculation for the purposes of (iii) and (iv) includes any power supply unit or casing, but excludes any mounting, fixing, bracket or other support structure;”.

(20) After paragraph A.4 (interpretation), add—

“A.4A

Where Class A permits the installation, alteration or replacement of any electronic communications apparatus, the permission extends to any—

- (a) casing or covering;
- (b) mounting, fixing, bracket or other support structure;
- (c) perimeter walls or fences;
- (d) handrails, steps or ramps; or
- (e) security equipment;

reasonably required for the purposes of the electronic communications apparatus.

A.4B

Nothing in paragraph A.4A extends the permission in Class A to include the installation, alteration or replacement of anything mentioned in paragraph A.4A(a) to (e) on any land which is, or is within, a site of special scientific interest if the inclusion of such an item would not have been permitted by Class A, as read without reference to paragraph A.4A.”

Carl Sargeant

Minister for Natural Resources, one of the Welsh Ministers

29 September 2014