

Explanatory Memorandum to:

**The Town and Country Planning (General Permitted Development)
(Amendment) (Wales) Order 2016**

This Explanatory Memorandum and Regulatory Impact Assessment has been prepared by the Department for Natural Resources of the Welsh Government 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 2016

I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM
Minister for Natural Resources
18 January 2016

1. Description

- 1.1 The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2016 (“the GPDO Amendment Order 2016”) amends the Town and Country Planning (General Permitted Development) Order 1995 (S.I.1995/418) (“the GPDO”).
- 1.2 The GPDO Amendment Order 2016 amends Part 3 (changes of use) of Schedule 2 of the GPDO to give permitted development rights to changes of use from buildings used as small scale houses in multiple occupation (use class C4) to use as dwellinghouses (use class C3).
- 2. Matters of special interest to the Constitutional and Legislative Affairs Committee**
 - 2.1 The amendment to Part 3 (changes of use) in Schedule 2 of the GPDO is being made as a consequence of changes to be made the Town and Country Planning (Use Classes) Order 1987 (“the Use Classes Order”) by the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 (“the Use Classes Amendment Order 2016”). The Use Classes Amendment Order 2016 will come into force on the same date as the GPDO Amendment Order 2016.
 - 2.2 The Use Classes Amendment Order 2016 amends the Use Classes Order to:
 - amend use class C3 (dwellinghouses) to:
 - include a definition of “single household” which applies to use class C3(a) only;
 - remove from the scope of use class C3(c) houses in multiple occupation falling in new use class C4; and
 - introduce a new Use Class C4 (houses in multiple occupation) which, subject to an exception, covers use of a dwellinghouse as a small House in Multiple Occupation as defined in section 254 of the Housing Act 2004. In broad terms, this use occurs where tenanted living accommodation is occupied by 3 to 6 people, who are not related and who share one or more basic amenities, as their only or main residence.
 - 2.3 It should be noted that the Use Classes Amendment Order 2016 is a ‘no procedure’ Order and an Explanatory Memorandum / Regulatory Impact Assessment (EM/RIA) in relation to this Order is not required.
- 3. Legislative background**
 - 3.1 The GPDO Amendment Order 2016 is made in exercise of powers conferred by sections 59, 60 and 333(7) of the Town and Country Planning Act 1990 (“the TPCA”).
 - 3.2 The GPDO is made under these powers and grants automatic planning permission for various types of development subject to the limitations

and conditions set in Schedule 2 of the GPDO. These are known, informally, as “permitted development rights”. The effect of permitted development rights is that no application for planning permission is needed.

- 3.3 The GPDO Amendment Order 2016 is subject to the negative procedure.

4. Purpose and intended effect of the provisions

- 4.1 As mentioned above the GPDO Amendment Order 2016 is connected with amendments to be made to the Use Classes Order by the Use Classes Amendment Order 2016.
- 4.2 Houses in Multiple Occupation (HMOs) can lead to changes and problems for the settled communities as the nature of a neighbourhood can change. In response to the concerns raised by local communities about the problems caused by HMOs, the Welsh Government commissioned research to examine and quantify the nature of the problems and propose potential solutions. The results of this research were published in May 2015. In addition to examining the extent of concentrations of HMOs in Wales and the issues associated with them, the research reviewed the existing legislation and made recommendations on potential changes.
- 4.3 The Use Classes Amendment Order 2016 amends class C3 (dwellinghouses) and introduces a new use class C4 (houses in multiple occupation). The amendment will increase the number of new HMOs which may require planning permission, allowing local planning authorities (LPAs) the opportunity to consider and manage the impacts of new HMOs on their communities.
- 4.4 The purpose of the amendment to be made by the GPDO Amendment Order 2016 is to enable small HMOs (new use class C4) to revert to use as a dwellinghouse (use class C3) without requiring planning permission.
- 4.5 The GPDO Amendment Order 2016 amends the GPDO to give new permitted development rights to changes of use from buildings used as small scale HMOs (new use class C4) to use as dwellinghouses (use class C3).
- 4.6 As the original policy intent was to enable LPAs to have more ability to manage the growth of HMOs, it is not considered necessary for LPAs to become involved in the reversion of an HMO to a dwellinghouse.

5. Consultation

5.1 In response to concerns raised by local communities about the problems caused by high concentrations of HMOs, the Welsh Government commissioned research to examine the nature and extent of the problems and propose potential solutions. The results of this research were published in May 2015¹. The research report made a number of recommendations, including for changes to planning legislation. The proposed amendments were to the Use Classes Order and to the GPDO and these proposals were the subject of a consultation exercise which took place over a 12 week period between 3 August and 26 October 2015. The consultation formed part of a wider consultation exercise on proposed amendments to secondary legislation for development management.

5.2 Question 15 of the consultation asked the following question in respect of the proposed amendments:

Q15	Do you agree with our proposal to enable small Houses in Multiple Occupation (new use class C4) to revert to use as a dwellinghouse (Class C3) without requiring planning permission by amending the Town and Country Planning (General Permitted Development) Order 1995?
------------	--

5.3 In response to the consultation, there was clear support for the proposed amendment to the GPDO if the amendments to the Use Classes Order took place. The majority of respondents (90%) also supported the proposed amendments to the Use Classes Order.

Question	Yes	Yes (subject to further comment)	No
Q15	75.7%	8.1%	16.2%

5.4 In addition to the statistical summary, a number of comments were received which have been summarised as follows.

5.5 The majority of respondents thought that this proposal was a sensible approach. They considered that requiring planning permission for a change of use from use class C4 to C3 would bring few recognisable benefits and be difficult to manage. A number of respondents supported this proposal provided that planning permission was required if the property was to revert to a HMO in the future, which is the case.

5.6 The respondents who disagreed with this proposal considered that all changes of use should be carefully considered. Concerns were expressed around the issue of “flipping” between use classes C3 and C4.

¹ <http://gov.wales/topics/planning/planningresearch/publishedresearch/houses-in-multiple-occupation-final-report/?lang=en>

- 5.7 The respondents who opposed the need for and the principle of the proposed changes to the Use Classes Order considered that if such changes were implemented then a permitted change from use class C4 to use class C3 would have merit.
- 5.8 The 'Summary of Responses Report' for the consultation can be found on the Welsh Government's website.

6. REGULATORY IMPACT ASSESSMENT

6.1 Options

6.1.1 Two options have been considered:

Option 1 – No Change – Do not amend the GPDO. This would mean that planning permission is required for a change of use from buildings used as a small House in Multiple Occupation (use class C4) to a dwellinghouse (use class C3).

Option 2 – Amend Part 3 (changes of use) in Schedule 2 of the GPDO to give permitted development rights to changes of use from buildings used as small Houses in Multiple Occupation (use class C4) to a dwellinghouse (use class C3).

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

- Welsh Government;
- Local Planning Authorities;
- Landlords; and
- The Community.

6.2 Option 1 – No change

Description

- 6.2.1 Under this option there would be no changes to the current legislation. As a consequence of the amendments to be made to the Use Classes Order by the Use Classes Amendment Order 2016 planning permission would be required for a change of use from buildings used as small Houses in Multiple Occupation (use class C4) to dwellinghouses (use class C3).

Cost

Welsh Government

6.2.2 There are no additional financial costs to Welsh Government in respect of this option.

Local Planning Authorities

6.2.3 The cost to the local planning authority (“LPAs”) would be associated with processing the planning applications and the time and resources this takes.

6.2.4 As there is currently no requirement to submit a planning application for the change of use from use class C4 to C3 it is difficult to estimate the number of planning applications that might be generated by the amendments to be made to the Use Classes Order. Therefore it is not possible to calculate either an annual cost per authority or an all Wales figure.

6.2.5 However, the cost associated with processing the individual change of use planning applications can be estimated. The work carried out by the Planning Advisory Service and The Chartered Institute of Public Finance and Accountancy in 2011 surveyed 15 LPAs in England to assess the cost build-up of activities relating to the determination of all planning applications². The results are summarised in Table 1 below:

Table 1 – Cost of a Planning Application to an LPA (2011)

Development Management Process	Average cost per application
Receipt and Validation	£81
Evaluation and Negotiation	£314
Reports and decisions	£143*
Total	£538

*This is an average for both Delegated reports and decisions and Committee reports and decisions.

6.2.6 Given that £538.00 represents an average cost of processing a planning application we would expect the determination of a change of use application, which is viewed as a relatively straightforward procedure, to be lower than the average.

6.2.7 The change of use planning application is accompanied by a fee of £380.00. This fee reflects the overall cost of handling, administering and deciding the application. The level set is designed to include recovery of direct costs and an apportionment of related overheads for local planning authorities.

² Planning Service Benchmarking Club 2011: Barchester City Council, PAS/CIPFA Report, February 2012

6.2.8 As LPAs routinely review and update their guidance documents, the cost of updating any such guidance could be captured as part of that routine work.

Landlords

- 6.2.9 The cost to a landlord would be associated with preparing and submitting a change of use planning application and the time and resources this takes. As outlined above, as there is currently no requirement to submit a planning application for the change of use from use class C4 to C3 it is not possible to gauge the number of applications that may be generated as a result of this option.
- 6.2.10 However, the cost associated with preparing and submitting individual change of use planning applications can be estimated. In this respect, landlords will bear the cost of preparing their proposed scheme and then using the planning system to obtain planning permission. In this respect, they will be required to pay a fee to the local planning authority, which is currently £380.00, for a change of use planning application.
- 6.2.11 Although we do not have figures on the average costs of preparing a planning application in Wales, Arup³ have estimated costs based on a selection of LPAs in England. The study provides a 'benchmark' for the typical financial costs associated with the submission of a planning application. The study includes costs associated with preparing a change of use planning application which would be required under this option.
- 6.2.12 The total cost of submitting a change of use application varied from £290 to £3,368 with an average cost of £1,245 and a median cost of £1,035. The research report concluded that the key factor in explaining this wide discrepancy in costs relates to the role of an agent in submitting a planning application.
- 6.2.13 From the research the agents' fees and the planning fees were considered the most significant costs to the applicant. Broadly, where an agent was not involved, the cost of the planning fee was considered greatest, and where an agent was used, their fee was considered the greatest cost. However, it was concluded that change of use planning applications are less likely to involve an agent.
- 6.2.14 Given the above the cost of the planning fee of £380.00 is considered to be the greatest cost to the landlord when submitting a change of use planning application.

The community

³ Benchmarking the costs to applicants of submitting a planning application (July 2009)
Communities and Local Government

6.2.15 There are no identified costs associated with this option for the local community.

Benefits

Welsh Government

6.2.16 There are no identified benefits for the Welsh Government associated with this option.

Local Planning Authorities

6.2.17 There are no identified benefits for local planning authorities associated with this option. From the consultation exercise associated with the proposed change to the GPDO it was considered that requiring planning permission from use class C4 to use class C3 would have no recognisable benefits and would be difficult to manage.

Landlords

6.2.18 There are no identified benefits for the landlords associated with this option.

The community

6.2.19 There are no identified benefits associated with this option for the community.

6.3 Option 2 – Amend Part 3 (changes of use) in Schedule 2 of the GPDO to give permitted development rights to changes of use from class C4 to class C3.

Description

6.3.1 This option amends Part 3 (changes of use) in Schedule 2 of the GPDO to give permitted development rights to changes of use from buildings used as small Houses in Multiple Occupation (use class C4), to use as a dwellinghouse (use class C3). This means that planning permission would not be required for a change from use class C4 to use class C3.

Cost

Welsh Government

6.3.2 The cost to Welsh Government of amending legislation will fall into existing budgets and there will be no additional financial costs in respect of this option.

Local Planning Authorities

- 6.3.3 There are no identified financial or resource costs to the LPA in respect of this option.

Landlords

- 6.3.4 There are no identified financial or resource costs to landlords in respect of this option.

The community

- 6.3.5 There are no identified costs associated with this option for the local community.

Benefits

Welsh Government

- 6.3.6 There are no identified benefits for the Welsh Government associated with this option.

Local Planning Authorities

- 6.3.7 This option would mean that there is no additional work that the LPA would have to undertake in terms of processing planning applications.

Landlords

- 6.3.8 This option would mean that there is no additional work or costs for landlords associated with submitting a change of use planning application. It would allow landlords to respond quickly to changing needs and demands of the market and return a small HMO back to a dwellinghouse.

The community

- 6.3.9 This option would allow small HMOs to return to dwellinghouses quickly which could assist with the local community's housing needs.

6.4 Summary and Preferred Option

- 6.4.1 Under Option 1, landlords seeking to change a small HMO (use class C4) to a dwellinghouse (use class C3) would be required to apply for planning permission. There are cost and resource implications for both local planning authorities related to the determination of the planning applications and cost for the landlord associated with the submission of a planning application. There are no identified benefits of Option 1, which would be difficult to manage from a Local Planning Authority's perspective.

- 6.4.2 Option 2 gives permitted development rights to changes of use from buildings used as small HMOs (use class C4) to use as a dwellinghouse (use class C3). This means that planning permission would not be required for a change from use class C4 to use class C3.
- 6.4.3 There are no identified financial or resource costs associated with Option 2 on the sectors most likely to be affected by the proposal. The main benefit associated with this option is that it allows landlords to respond quickly to changing needs and demands of the market and return a small HMO back to a dwellinghouse. This in turn may assist with the local community's housing needs. Option 2 is therefore the preferred option.

Appendix 1

Competition Filter

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector categorised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No