

Explanatory Memorandum to:

**The Town and Country Planning (General Permitted Development)
(Amendment) (Wales) Order 2018**

This Explanatory Memorandum has been prepared by the Planning Directorate 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 2018.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs
4 May 2018

PART 1 – EXPLANATORY MEMORANDUM

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 Part 24 of Schedule 2 to the GPDO relates to certain permitted development undertaken by electronic communications code operators. The Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No.2) Order 2014 provided for, in relation to article 1(5) land, the construction, installation or replacement of telegraph poles, cabinets or lines for fixed-line broadband services without the requirement for prior approval of the Local Planning Authority. Article 1(5) land refers to land within a National Park, an Area of Outstanding Natural Beauty and an area designated as a Conservation Area.
- 1.3 The conditions introduced relate to the giving of notice to the relevant Local Planning Authority, and in some instance Natural Resources Wales. Further conditions apply to the appearance of cabinets and telegraph poles. Any cabinet installed must be green or black (but not matt black) or a colour which has the prior written approval of the local planning authority. A telegraph pole must have the same appearance and be made of the same material as the nearest existing telegraph pole to it which has planning permission, unless an alternative has the prior written approval of the local planning authority.
- 1.4 Relaxation of the prior approval application requirement, which was time limited to 30 May 2018, was introduced by the 2014 amending Order to support the Programme for Government commitment to deliver fast reliable broadband to those parts of Wales not currently served by the market. This commitment was delivered following the provision of funding from Welsh Government, UK Government , the European Union (through the European Regional Development Fund) and BT, known as the Superfast Cymru project.
- 1.5 While the Superfast Cymru project has come to an end, the next stage of the rollout to extend coverage will commence later in 2018. Telecommunication companies are also continuing to deploy commercially across Wales including in article 1(5) land.
- 1.6 Support for the roll-out of broadband in Wales continues to be a Welsh Government commitment. Prosperity for All: the National Strategy, states superfast broadband and comprehensive mobile coverage are nationally important programmes. This is reinforced by Prosperity for All: Economic Action Plan which explains the Welsh Government will deliver fast reliable broadband across Wales.

- 1.7 To support this, the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2018 seeks to retain the existing permitted development rights by extending the time-limited clause by a year to 30 May 2019.

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

- 2.1 None.

3. Legislative background

- 3.1 The powers to make this 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 Town and Country Planning (General Permitted Development) Order 1995 is made under these powers. 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 (c. 32). These powers are thus now exercisable by the Welsh Ministers.
- 3.2 Section 333(5) of the Town and Country Planning Act 1990 provides that the procedure for a statutory instrument which contains a development order is a negative resolution procedure.

4. Purpose & intended effect of the legislation

- 4.1 The purpose of this Order is to extend, until 30 May 2019, the relaxation of the prior approval application requirement in A.2(4A) of Part 24 (as it applies in Wales) of the GPDO in relation to certain apparatus used by electronic communications code operators on article 1(5) land for the provision of fixed-line broadband. This is a short term response to maintain continuity to enable the expedient roll-out of broadband in Wales.
- 4.2 In the case of the expedient roll-out of fixed-line broadband, reverting to the prior approval procedure as previously required pre-2014 will result in delays in delivering broadband to rural communities and burden telecommunication operators with additional costs.
- 4.3 The (time-limited) “fast track” planning arrangement introduced by the 2014 amendment order is aimed at striking a better balance between affording more certainty for developers, providing nationally important

communication infrastructure in non-commercially viable areas and providing appropriate protection to visual amenity.

5. Consultation

- 5.1 The consultation, including all consultation responses, undertaken for the Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No.2) Order 2014 is available on the Welsh Government website - <https://beta.gov.wales/proposed-additional-permitted-development-rights-electronic-communications-code-operators>
- 5.2 A further consultation will be issued in May 2018 regarding a wider review of the Town and Country Planning (General Permitted Development) Order 1995. This will include proposals on the medium to long term future of permitted development rights for fixed-line broadband infrastructure.

PART 2 – REGULATORY IMPACT ASSESSMENT

The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2018

- 1.1 A regulatory impact assessment has not been prepared for this Order.
- 1.2 The regulatory impact assessment that accompanied the Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No. 2) Order 2014 (S.I. 2014/2692 (W. 267)), which introduced the provision that this Order seeks to extend, analysed the costs/benefits to business, charities and the public sector. Notwithstanding inflationary cost increases, no impact is foreseen beyond what was examined in the previous assessment.
- 1.3 The regulatory impact assessment for the 2014 Order is available to view on the National Assembly for Wales website - <http://www.senedd.assembly.wales/documents/s33279/CLA4-26-14%20Explanatory%20Memorandum.pdf>