

Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2021

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) (Wales) Order 2021.

I am satisfied the benefits justify the likely costs.

Julie James MS
Minister for Housing and Local Government

8 March 2021

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) (Wales) Order 2021 (“the Amendment Order”) amends Schedule 2 to the GPDO as follows:
 - Article 3 amends paragraph A.2(c) of Part 3A of Schedule 2 (Temporary Building and Changes of Use for Public Health Emergency Purposes) of the GPDO. This extends the period within which any use of a building or land for the purpose of Class A must cease and any building, movable structure, works plant and machinery permitted by Class A must be removed and the building or land must be restored to its condition before the development took place, or to such other state as may be agreed in writing between the Local Authority and the developer from twelve to eighteen months where the development begins before 10 April 2021.
 - Article 4 amends paragraph A.1(b) of Part 12A of Schedule 2 (Emergency Development by Local Authorities), extending the period within which any use of land for a purpose of Class A must cease and any buildings, plant, machinery, structures and erections permitted by Class A must be removed and restored to its condition before the development took place from twelve to eighteen months where the development begins before 30 March 2021.

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. 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(5B) 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 and intended effect of the legislation

- 4.1 At the start of the pandemic, an urgent need was identified for temporary facilities to enable Local Authorities and NHS bodies to respond and provide facilities to limit its spread, treat, test, care for and manage the recovery of an extremely high number of patients and those directly impacted. This included the provision of field hospitals, testing stations and body storage facilities.
- 4.2 Parts 3A (Temporary Building and Changes of Use for Public Health Emergency Purposes) and 12A (Emergency Development by Local Authorities) were therefore added to Schedule 2 of the GDPO, granting a 12 month planning permission for development for the purpose of preventing, controlling or mitigating the effects of, or taking other action in connection with a public health emergency in the United Kingdom.
- 4.3 The introduction of permitted development rights was to facilitate the immediate provision of emergency facilities to help save lives and deal with excess deaths without having to go through the normal planning process
- 4.4 The intention was that should the developments need to be retained beyond the 12 month period, planning permission would be sought via an application to the local planning authority.
- 4.5 The situation in Wales remains very serious. Cases of the virus are high and a more infectious strain of coronavirus has emerged since the provisions were originally made. Vaccines have also emerged with the Wales vaccination programme beginning in December 2020.
- 4.6 In response, Local Authorities and NHS bodies have indicated there is a need to retain many of the sites beyond the 12 month period to continue to manage the pandemic, but also as part of the delivery infrastructure for the vaccine.
- 4.7 Against a backdrop of extreme pressure on the Local Authorities and the NHS, it is accepted that at this time it would not be appropriate for resources to be drawn away from managing the emergency to prepare and submit planning applications, and potentially close or relocate existing facilities.
- 4.8 The Order seeks to allow additional time for planning applications to be prepared and submitted (or for the removal of development if it is no longer needed), avoiding the need for resources to be immediately diverted.
- 4.9 The six month extension applies to development under Part 3A that began before 10 April 2021 and, in the case of development under Part 12A, that began before 30 March 2021.

4.10 For development that begins on or after 30 March 2021 (under Part 12A) or 10 April 2021 (under Part 3A), the existing 12 month period remains.

5. Consultation

5.1 To ensure all development remains lawful and regularised, the Order must come into force prior to the permission at the first sites lapsing. Unfortunately, there is not sufficient time to undertake a public consultation.

5.2 Whilst it is regrettable that consultation with the public has not taken place, taking account of the short term nature of the planning impacts from these developments balanced against their necessity as part of the response to COVID-19 to protect human health, taking forward this Order and prioritising the response to the pandemic it is considered reasonable.

5.3 The views of all stakeholders will be sought retrospectively on Part 3A and Part 12 generally as part of a future consultation on wider changes to the GPDO. Any feedback will be used to inform any future changes.

PART 2 – REGULATORY IMPACT ASSESSMENT

Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2021

1. Options

1.1 The following options are considered:

Option 1: Do nothing – Planning permission for developments in situ for twelve months will lapse. On or before the expiry of the twelve month period, any use must cease; any building, moveable structure, works, plant or machinery must be removed; and the building or land restored to its condition before the development took place, or to such other state as may be agreed in writing between the local planning authority and the developer.

Alternatively, if there is a need to retain the development, a planning application must be submitted and approved by the local planning authority.

Option 2: Make the legislation – Planning permission for developments undertaken prior to 30 March 2021 (Part 12A) and 10 April 2021 (Part 3A) respectively will be extended by six months. This provides additional time for planning applications to be submitted or for the removal of development if it is no longer needed.

1.2 Option 2 is the favoured option as it will enable Local Authority and NHS resources to focus on responding to the pandemic and the rollout of the Wales' vaccination programme.

2. Cost and Benefits Analysis

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

- NHS bodies & Local Authorities (Wales' 22 unitary authorities)
- Local Planning Authorities (LPAs) – 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.
- Those affected by an emergency (as defined in the Order) – Includes business, organisations and the general public.

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

Cost Analysis for Option 1: Do nothing

Local Authorities & NHS bodies

- 2.3 Planning applications will become necessary to regularise development under Part 3A and Part 12 of the GPDO which Local Authorities and NHS bodies wish to retain beyond 12 months.
- 2.4 This will result in resources being diverted to prepare, submit and manage the planning application process, or arrange for developments to be removed/relocated.
- 2.5 Due to the broad scope of the development granted, allowing for development by or on behalf of a Local Authority or NHS body for the purpose of preventing, controlling or mitigating the effects of, or taking other action in connection with a public health emergency, we are unable to quantify the total number of developments undertaken under these provisions. The right has been used to provide permission for a range of uses including hospitals, health facilities, testing centres, coroner facilities, mortuaries, additional residential accommodation and storage and distribution, including for community food hubs. The requirement for planning permission for the retention of such facilities beyond 12 months could therefore impact a significant number of developments.
- 2.6 Public consultation requirements and basic case administration means the determination of planning applications would be expected to take at least 5 weeks. The statutory determination period is 8 weeks.
- 2.7 The planning fee for a planning application varies based on the type of development. There will be additional 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 change of use application varied from £290 to £3,368 with an average cost of £1,245 and a median cost of £1,035.
- 2.8 A number of variables had an impact on these costs, including the use of an agent, the use of existing plans submitted as part of previous schemes, and the savings incurred by submitting applications via the Planning Portal (this limited 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 for an application for this scale of development. A Local Authority may use 'in-house' services to reduce some preparation costs.
- 2.9 The refusal of planning permission, and the subsequent need to close and remove and/or relocate facilities will impact upon the response to pandemic,

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>

which could potentially give rise to unquantifiable indirect costs as they seek alternative measures.

- 2.10 Indirect costs are also likely to be incurred as a result of use of the private sector for the provision of services and the hiring of existing facilities whilst the relevant permissions are sought. Due to the scope of the development permitted, this indirect cost cannot be quantified.

Local Planning Authorities

- 2.11 LPAs will 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.

Those affected by an emergency

- 2.12 The imminent requirement for planning permission for certain developments created at the start of the pandemic will impact upon the response to the emergency, particularly if a decision is taken to relocate facilities such as testing stations or temporary accommodation.
- 2.13 This could potentially give rise to indirect costs to those affected by the emergency, such as the general public, the homeless and businesses. These costs are unquantifiable as the severity of costs incurred will depend on a number of variables such as the type of development, its current role in the response to the pandemic, its location etc. and the details of any alternative provisions provided (if any).

Benefit Analysis for Option 1 – Do nothing

Local Authorities & NHS bodies

- 2.14 There are no direct or indirect benefits. The requirement for planning application to be submitted imminently and/or for facilities to be relocated will cause disruption to Local Authorities and NHS body's efforts to manage the impacts of the pandemic.

Local Planning Authorities

- 2.15 LPAs will receive planning application fees associated with any applications that are submitted. Planning application fees vary, based on the type and scale of development proposed. The scale ranges from £85 up to a maximum of £300,000.
- 2.16 Due to the broad nature of developments under Parts 3A and 12, it is not possible to quantify the potential fee income that could be received.

Notwithstanding this, the application fee offsets the cost of the LPA to process the application and not to generate profit.

Those affected by an emergency

- 2.17 There are no direct or indirect benefits for those affected by an emergency.
- 2.18 However, those with an interest in the development will 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.

Cost Analysis for Option 2: Make the legislation

Local Authorities & NHS bodies

- 2.19 Making the legislation will not result in any additional costs.
- 2.20 Cost savings (those identified in paragraphs 2.7-2.10) would be achieved where developments may be required beyond 12 months, but no longer than 18 months and can be removed as oppose to applying for planning permission.

Local Planning Authorities

- 2.21 There will be no additional costs for local planning authorities.
- 2.22 If any existing developments are to be retained after the extended period, planning applications will be submitted. It is however anticipated that demand/use of the developments erected/created using the permitted development rights will reduce as the national vaccination programme progresses, resulting in their removal. It is therefore anticipated that the number of planning applications will be reduced compared with option 1 (do nothing). However, planning application fees are intended to offset LPAs costs and not to generate profit.

Those affected by an emergency

- 2.23 There are no additional direct or indirect costs.
- 2.24 Existing facilities used as part of the response to COVID-19 can remain for an additional six months.

Benefit Analysis for Option 2

Local Authorities & NHS bodies

- 2.25 Extending the permitted period by six months for developments erected/created prior to 30 March 2021 (Part 12A) and 10 April 2021 (Part 3A)

would relieve any immediate requirement (and the associated relocation of resources) for the submission of planning applications. This will enable resources to remain focused on the response to the pandemic and delivering the national vaccine programme.

- 2.26 The additional six months will provide time for NHS bodies & Local Authorities to undertake assessments to understand the estate required to continue to respond to the pandemic and to support the national vaccine programme as it progresses. Planning applications can be submitted for the subsequent developments that are to be retained, and plans put in place for the removal of those no longer required.

Local Planning Authorities

- 2.27 Whilst there are no direct benefits, generally, reducing the number of planning applications in the planning system allows LPAs to focus valuable staff resources on more complex applications and resource intense aspects of the system.

Those affected by an emergency

- 2.28 Facilities used in response to the pandemic will be retained, to the benefit of everyone affected by COVID-19.
- 2.29 However, there would be a further six month period during which members of the public wouldn't be consulted and potential planning impacts caused by these type of developments remaining unresolved. Notwithstanding this, the Welsh Government has not received correspondence or had any notable feedback from stakeholders to indicate there are significant problems occurring with any of the sites.
- 2.30 Taking account of the short term nature of the planning impacts and the consequences for human health from COVID-19, the national prioritisation of the response to the pandemic and the vaccination programme it is considered reasonable.

Summary of the preferred option

- 2.31 Option 2 is the preferred option to remove the burden placed upon HNS bodies and Local Authorities to submit planning applications in a relatively short period of time.

3. Consultation

- 3.1 No consultation has been undertaken on this regulatory impact assessment.
- 3.2 To ensure all development remains lawful and regularised, the legislation must come into force prior to the permission at the first sites lapsing. The

earliest date is 30 March 2021. Unfortunately, there is not sufficient time to undertake the usual three month public consultation.

- 3.3 Whilst it is regrettable that consultation has not taken place, taking account of the short term nature of the planning impacts from these developments balanced against their necessity as part of the response to COVID-19 to protect human health, taking forward this Order and prioritising the response to the pandemic it is considered reasonable.
- 3.4 Notwithstanding the above, the views of all stakeholders will be sought retrospectively on Part 3A and Part 12 generally as part of a future consultation on wider changes to the GPDO. Any feedback will be used to inform any future changes.
- 3.5 It will also be communicated to all responsible for the emergency developments that there is no expectation that any further extensions will be provided, and that they must plan for submitting planning applications for any facility they are seeking to retain beyond 18 months, or arrange for their removal.

4. Competition Assessment

- 4.1 A competition filter test has been applied to the proposed amendments. The results of the test suggest that the proposals are unlikely to have any significant detrimental effect on competition.

5. Post implementation review

- 5.1 Regular communications are taking place between the Welsh Government and stakeholders. This enables discussion regarding any issues or concerns with the arrangements introduced by the new secondary legislation. Members of the Senedd and the public will also provide evidence of the effectiveness of the new arrangements.
- 5.2 The Welsh Government will also seek to include the measures contained in the Order as part of a future consultation on wider changes to permitted development rights. This will provide a further opportunity for feedback.