

Explanatory Memorandum to [*Enter the title of the SI, draft SI or other subordinate legislation which is required to be laid before the Assembly.*]

This Explanatory Memorandum has been prepared by [*enter name of department*] and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with [*insert one of the following*]:

Standing Order 27.1 (*or other standing order requirement if appropriate*)

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of [*insert title of Order*]. **AND WHERE AN RIA HAS BEEN COMPLETED INCLUDE** [I am satisfied that the benefits outweigh any costs.]

NAME OF MINISTER

DATE

1. Description

- 1.1 The Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) allows minor development to be undertaken under a deemed grant of planning permission without the need to submit a planning application, this is known as “permitted development”.
- 1.2 A review of non-householder minor development consents was published by the Department of Communities and Local Government (DCLG) in November 2008, “Final Report - Non Householder Minor Development Consents Review”. The report was undertaken by White Young Green Planning with the Welsh Assembly Government a member of the Project Steering Group.
- 1.3 The DCLG 2008 report recommends a number of measures, which would provide greater permitted development rights (PDRs) for non-householder development in cases where there would no adverse impacts on neighbours or the environment. The report states that extended PDRs, especially for small and medium sized businesses, can help stimulate economic recovery or innovation by reducing unnecessary regulation.
- 1.4 The DCLG 2008 report has informed changes to the GPDO, as it applies in England, resulting in amended PDRs for Part 8 (Industrial and Warehouse Development) and Part 32 (Schools, Colleges, Universities and Hospitals) of schedule 2 to the GPDO. These amendments have been introduced in England by Statutory Instrument 2010/654. SI 2010/654 also introduces, among other things, new PDRs for office buildings (use class B1(a)), shops (use class A1) and financial/professional services (use class A2) of the schedule to the Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order).
- 1.5 The proposed amendments in this consultation paper are informed by the recommendations of the DCLG 2008 report, which have already been subject to detailed consideration in England. The proposed amendments also build upon the changes introduced to the GPDO in England by SI 2010/564.
- 1.6 The effect of the proposed amendments would be :
 - Amended PDRs for Industrial and Warehouse Development (Part 8 of schedule 2 to the GPDO).
 - Amended PDRs for Schools, Colleges, Universities and Hospitals (Part 32 of schedule 2 to the GPDO).
 - New PDRs for office buildings (use class B1(a) of the schedule to the Use Classes Order) .
 - New PDRs for shops and financial/professional services establishments (use classes A1 & A2 of the schedule to the Use Classes Order).

New PDRs for refuse/cycle storage facilities to apply to Part 8 and Part 32 of schedule 2 to the GPDO, office buildings (use class B1(a)), shops (use class A1) and financial/professional services (use class A2) of the schedule to the Use Classes Order

Greater protection for World Heritage Sites in terms of the types of development covered by this consultation paper.

A requirement for porous hard surfaces rather than impermeable hard surfaces in respect of Part 8 (Industrial and Warehouse development).

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

2.1 [None]

3. Legislative background

3.1 The functions of the Secretary of State to make development orders under sections 59, 60, 61 and 333(7) 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). Section 333 of the Act provides that the procedure for a statutory instrument which contains a development order is a negative resolution procedure. There are some exceptions to this provision but they do not apply in this instance.

4. Purpose & intended effect of the legislation

The issue to be addressed by legislation

4.1 Research and evidence contained in the DCLG 2008 report indicates that there are a number of problems with the GPDO, including:

A number of land uses do not currently benefit from PDRs, these include offices, shops and financial/professional services. Occupiers of premises in these land uses are currently disadvantaged and are

currently unable to undertake low-impact changes without the need to submit a full planning application.

Stakeholders have identified that existing PDRs for Part 32 (Schools, Colleges, Universities and Hospitals) are set so low as to be of little practical use and Part 8 of the GPDO does not currently permit the erection of new buildings.

On some subjects e.g. hard surfaces, flood risk and waste storage, the GPDO is outdated.

Inconsistencies in the application of thresholds and limitations for PDRs – an impacts approach to PDRs should be adopted, which takes account of the potential effect of development on neighbours and adjoining land uses.

The scale of the issue

- 4.2 The submission of planning applications places a financial cost on applicants and also results in delays in the implementation of development. Local planning authorities (LPAs) also face an administrative burden and costs in terms of processing applications, although the financial cost is offset to some extent by the fee for the planning application. If the proposed amendments were implemented, it is estimated, based on evidence in the DCLG 2008 report, that approximately 6% (between 700 & 800) of all applications for minor development in Wales per annum would no longer be required.

Who is affected?

- 4.3 If the proposed amendments were taken forward following the consultation exercise, the sectors most likely to be affected would be:

Commercial enterprises and institutions that pay for and benefit from improvements and alterations to their premises.

LPAs who advise on PDRs, determine applications for planning permission and consider enforcement action where development is carried out in breach of planning legislation.

Businesses that provide design advice and often act as agents for those seeking planning permission.

Residents and other occupiers of neighbouring property who may be affected by development in the area.

- 4.4 The objectives are:

To allow the planning system to respond more proportionately to applications for minor industrial, commercial, educational and hospital developments.

To reduce the administrative burden on businesses and educational/health institutions by allowing greater freedom to undertake minor development (in cases where there is no or insignificant impact) without the need to apply for full planning permission.

To help towards reducing the overall number of applications for minor development in the planning system, thereby providing LPAs with the opportunity to re-allocate resources to development schemes that generate more significant and complex impacts.

To tighten aspects of the GPDO – for example, replacing the current allowance for hard surfaces in Part 8 of schedule 2 to the GPDO with a requirement to provide permeable hard surfaces.

Protection for World Heritage Sites by restricting PDRs in these areas.

Risks/hazards if legislation is not made

- 4.5 If amendments to the GPDO are not introduced, the existing limitations of the planning system will continue to apply, which will result in the following:

Certain industrial and commercial businesses, educational and health institutions would continue to face some restrictions in their ability to undertake uncontentious, minor alterations, extensions or new build in order to meet their operational needs. In the case of shops, financial/professional services and offices, there would be no PDRs. This lack of flexibility could deter business from extending or altering their premises due to the cost and delay of having to submit planning applications. If the legislation is not implemented, the restrictions would remain and an opportunity to support the Welsh Government's 2010 strategy for economic recovery, "Economic Renewal: a new direction" - which states that the development management system must be proportionate and efficient and should not impose unjustifiable costs to business - would be lost.

Certain industrial and commercial businesses and educational/health institutions would continue to be required to submit planning applications for some types of minor alterations, extensions or new build, which already benefit from PDRs in England.

LPAs would continue to determine uncontentious and unnecessary applications for minor non-domestic development when resources could be used more effectively, particularly in dealing with applications with more significant impacts.

With limited restrictions imposed on current PDRs for hard surfaces or for development within World Heritage Sites, there is a greater risk that inappropriate development, on a cumulative basis, could have a significant adverse effect on flood risk or on a World Heritage Site's 'outstanding universal value'.

How will the legislation enable sectors to operate more efficiently?

- 4.6 The proposed legislative amendments are considered necessary in order to:

Provide greater flexibility for certain industrial and commercial businesses and educational/health institutions to undertake a range of minor alterations, extensions, and in some cases new build without the need to submit planning applications.

Release some resources within LPAs, which will no longer need to determine the same number of applications for minor development proposals.

Ensure that PDRs take account of the potential impact of development, which will benefit residents and other occupiers of neighbouring property.

Potentially allow residents and other occupiers of neighbouring property to benefit from the additional protection afforded to World Heritage Sites. The requirement for any hard surfaces, that are the subject of this Order, to be porous would also contribute towards reducing the risk of surface water flooding, which could benefit occupiers of adjoining premises.

5. Consultation

[This section will be completed following the consultation exercise and analysis of responses].

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

6.1 The following options have been considered:

Option 1 – Do nothing

6.2 Option 1 would entail no change to the GPDO as it applies to Wales.

Option 2 – Do minimum

6.2 Whilst a “do minimum” option has been considered, it would be difficult to achieve the “Purpose & intended effect of the legislation”, as outlined in section 4 of the consultation paper, without amendments to the GPDO as it applies in Wales. To secure these amendments, subordinate legislation will be required. Without changes to the GPDO, via subordinate legislation, there is no means of making changes to PDRs in Wales.

6.3 Given that new legislation is required in order to make any changes to the GPDO in order to meet the “Purpose & intended effect of the legislation”, there is no benefit in terms of resources or speed by

pursuing a “do minimum” option. The resources and time expended in only making selected amendments to the GPDO, as applied to the land uses considered in this document, would be the same as pursuing the full suite of measures detailed in Option 3.

Option 3 – Amend the GPDO, as set out in the measures contained in the consultation paper

- 6.4 Introduce amendments to the GPDO in Wales to provide greater flexibility for certain industrial and commercial businesses and educational/health institutions to make improvements and alterations to their premises without the need to submit a planning application.

7 Costs and Benefits

- 7.1 As identified in section 4 of this document, if the proposed amendments were taken forward following the consultation exercise, the following sectors are most likely to be affected by the costs and/or benefits of the proposed amendments:

Commercial enterprises and institutions that pay for and benefit from improvements and alterations to their premises.

LPAs who advise on PDRs, determine applications for planning permission and consider enforcement action where development is carried out in breach of planning legislation.

Businesses providing planning services - that provide design advice and often act as agents for those seeking planning permission.

Residents and other occupiers of neighbouring property who may be affected by development in the area.

Option 1 – Do nothing: costs analysis

Commercial enterprises and institutions

- 7.2 A direct cost is that a number of minor development proposals, involving alterations, extensions and new build would still require the submission of a planning application to the LPA, with an associated planning fee. Planning fees for such development are currently between £166 (alterations involving no increase in floor space or development creating no more than 40sqm additional floorspace) and £330 (an increase in floor space over 40sqm but less than 75sqm), these fees would still apply.
- 7.3 Indirect costs relate to fees involved in appointing an agent or having plans drawn up. Also, there may be an indirect cost to the applicant in

terms of the delay and uncertainty caused by the planning application process.

Local Planning Authorities

- 7.4 There would be no direct or indirect costs to the LPA as fee-generating planning applications would continue to be submitted.

Businesses providing planning services

- 7.5 Businesses providing planning advice and services would not be affected as any work streams associated with the minor development addressed in this paper would remain – no direct or indirect costs.

Residents and occupiers of neighbouring property

- 7.6 With no change to the GPDO, current PDRs would be unaffected and there would be no direct or indirect costs to residents or neighbouring occupiers.

Option 1 – Do nothing: benefits analysis

Commercial enterprises and institutions

- 7.7 There would be no direct or indirect benefits to this sector.

Local Planning Authorities

- 7.8 A direct benefit would be that LPAs would continue to receive planning fees for a number of minor development proposals. However an opportunity to free up resources to deal with more complex planning applications would be lost.

Businesses providing planning services

- 7.9 A direct benefit would be that businesses would continue to be involved in any work streams associated with the minor development proposals addressed in this paper. No indirect benefits.

Residents and occupiers of neighbouring property

- 7.10 Residents and neighbouring occupiers would continue to have the opportunity to comment on planning applications involving the minor development schemes addressed in this paper - a direct benefit.

Option 2 – Do minimum

- 7.11 As discussed in paragraph 6.3, in order to address the issues raised in “Purpose & intended effect of the legislation”, changes to the GPDO will be required. These changes cannot be achieved without adopting subordinate legislation and a new amendment Order for Wales.

Option 3 – Amend the GPDO, as set out in measures contained in the consultation paper: costs analysis

Commercial enterprises and institutions

- 7.12 No indirect or direct costs. In fact this sector would benefit from cost savings as certain developments would no longer require a planning application or the associated planning fee.

Local Planning Authorities

- 7.13 Based on the findings of the DCLG 2008 report, the proposed changes to the GPDO would result in a reduction of approximately 6% of all minor planning applications in Wales each year, this equates to between 700 and 800 applications per year and would result in the loss of some planning fees for LPAs.
- 7.14 Based on current planning application fees for category 2 (the erection of buildings) development, contained in the planning application fees regulations (SI 2009 No.851), the loss of fee income to LPAs would be between £166 and £330 per application. So a 6% reduction in the number of minor applications for non-domestic uses (based on an assumption that 750 applications per annum would be affected) could result in an estimated total loss of fee income to LPAs in Wales of between £124,500 and £247,500 per annum. However it is assumed that planning fees relate directly to the work involved on behalf of the relevant planning authority, therefore any reduction in fees will be mirrored in a reduction in associated work by the relevant planning authority.

Businesses providing planning services

- 7.15 Businesses providing planning consultancy services may potentially lose some fee generating work although given the small-scale nature of the development affected this impact is likely to be limited. There is no evidence available, which could be used to quantify this direct cost.

Residents and occupiers of neighbouring property

- 7.16 No direct or indirect costs.

Option 3 –Amend the GPDO, as set out in measures contained in the consultation paper: benefits analysis

Commercial enterprises and institutions

- 7.17 A direct benefit for this sector is the greater freedom and flexibility for businesses and some institutions to undertake minor alterations to their premises without requiring planning permission. This will remove some of the delay and uncertainty associated with submitting a planning application.
- 7.18 Another direct benefit for the sector is the removal of costs associated with submitting planning applications for this form of minor development. As discussed in paragraph 7.14, the application fee for the type of development affected by the proposals in this consultation document will be between £166 and £330 – an estimated saving for this sector of approximately £124,500 and £247,500 per annum. However there will also be significant additional costs if planning professionals are employed to design, plan and manage applications. These additional charges would also be saved.
- 7.19 The following indirect benefits will also arise:

The ability to undertake alterations to premises without the need for a planning application, may facilitate the expansion of businesses and institutions, which could assist this sector in contributing towards economic growth.

Minor alterations will help to secure improved premises and buildings, allowing this sector to remain in situ, rather than having to find or invest in new premises.

Local Planning Authorities

- 7.20 Whilst there may be some loss of fee income, LPAs may benefit from the removal of some minor, uncontentious applications from the system. Whilst these types of application incur a fee, they still take up resources in terms of processing, advertising and determining. If these applications are taken out of the system, LPAs could benefit by having the ability to reallocate valuable staff resources to other applications, which may have more complex and significant impacts – an indirect benefit.

Businesses providing planning services

- 7.21 An indirect benefit for business could be that LPAs are able to invest more time on other, potentially more contentious applications, which could provide an improved service from the LPA to this sector.

Residents and occupiers of neighbouring property

- 7.22 A direct benefit would be that there may be tighter control over some development, which could serve to reduce any potential adverse environmental impact on this sector e.g. requiring hard surfaces associated with industrial & business uses to be porous in certain cases will reduce the risk of flooding for neighbours and neighbouring property.
- 7.23 An indirect benefit is that the amendments to proposed PDRs are impact based, and take account of issues such as privacy, overbearing development and impact on the character of the street scene. This should ensure that the amenity of this group is protected and not adversely affected by amended PDRs.

8 Impact of proposed legislation on key sectors

Local Government

- 8.1 The impacts of the proposed amendments have been considered in section 7.

Voluntary Sector

- 8.2 The nature of development that would be affected by this consultation document (primarily commercial, industrial and educational) means that any impact on the voluntary sector is likely to be limited. In fact there may be a positive impact on this sector, particularly on groups in the education sector, which may have the opportunity to undertake minor alterations, extensions and some new build without having to submit planning applications.

Business

- 8.3 The impacts of the proposed amendments have been considered in section 7.

9 Impact of proposed legislation on duties

Equality of Opportunity

- 9.1 The proposed legislation would not have any adverse equality impacts. The proposed amendments would have an equal impact on all affected sectors.
- 9.2 There may be some benefits in terms of inclusive access where occupiers decide to undertake alterations to premises to make improvements such as level/ramped access into buildings.

The Welsh Language

- 9.3 The proposals do not have any adverse implications for the Welsh language.

Sustainable Development

- 9.4 The proposed amendments would not have any significant adverse impacts on sustainable development.
- 9.5 Additional PDRs would provide business, industry and educational institutions with the ability to make small-scale changes to premises and businesses that may allow them to expand/remain in their current location, encouraging a sustainable approach to the use of existing buildings and premises.
- 9.6 The proposed amendments would require porous materials to be used in certain cases where PDRs allow the provision of hard surfaces associated with Part 8 industrial and warehouse development. This restriction on hard surfaces would help towards reducing flood risk associated with surface water run-off.

10 Summary

- 10.1 Based on the above analysis of both options, it is considered that Option 3, which proposes amendments to the GPDO should be introduced. This option is preferred in order to:

Provide certain industrial and commercial businesses and educational/health institutions with greater flexibility in order to undertake alterations, extensions and some new build without having to submit a planning application. This will contribute towards reducing unnecessary regulation with the aim of stimulating economic growth and innovation.

Contribute towards reducing the number of minor, uncontentious and therefore unnecessary planning applications in the planning system and therefore potentially releasing resources within LPAs in order to focus on more complex development schemes. This will also help towards facilitating a proportionate approach to development management.

Take account of any potential adverse effects of new PDRs on neighbours and neighbouring properties by adopting an impacts-based approach, which takes account of any potential issues such as privacy, overbearing development and impact on the character of the street scene.

Provide greater protection for World Heritage Sites.

Contribute towards reducing the risk of surface water flooding by restricting the use of impermeable hard surfaces for industrial and warehouse development.

11 Consultation [this section will be completed following the completion and analysis of the consultation]

12 Competition Assessment

12.1 A competition filter test has been applied to the proposed amendments. The result of the test suggests that the proposed amendments to the GPDO, set out in the consultation paper, are unlikely to have a significant detrimental effect on competition.

12.2 The proposed amendments will reduce the requirement to submit planning applications for a number of minor development schemes. This may result in a potential reduction in fee-earning work for businesses that provide planning services, such as planning agents or consultants. However the relaxation of PDRs may also result lead to an increase in the number of minor development proposals – as the uncertainty and delay associated with planning application process would be removed - this could lead to additional work for businesses providing planning services, compensating for the potential loss of fee-earning work.

13 Post Implementation Review

13.1 The Welsh Government will monitor whether the changes have resulted in a reduction in the number of applications for minor non-domestic development by analysing LPAs' development management statistics.

13.2 Regular meetings between Welsh Government's Planning Division and (i) Wales Planning Forum (which includes business and third sector interests), (ii) Chief Planning Officers and (iii) Planning Lead Members will also be a forum for discussing any issues or concerns with the new legislation. Feedback from the Planning Inspectorate (Wales) and representations to the Welsh Government's Planning Division by interested sectors, Assembly Members and the public will also provide evidence of the effectiveness of the proposed legislation.

13.3 An indication of the timescales for reviewing the legislation will be provided in the final RIA, following consultation.