

EXPLANATORY MEMORANDUM TO
THE PLANNING (GENERAL DEVELOPMENT) (AMENDMENT) ORDER (NORTHERN
IRELAND) 2011

2011 No. 75

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of the Environment to accompany the above Statutory Rule which is laid before the Northern Ireland Assembly.
- 1.2 This Statutory Rule is made under Article 13 of the Planning (Northern Ireland) Order 1991 and is subject to the negative resolution procedure.
- 1.3 The Rule is due to come into operation on 6th April 2011.

2. Purpose

- 2.1 This Order amends the Planning (General Development) Order (NI) 1993 (S.R. 1993 No. 278 as amended) (the "GDO") by –
 - revising existing householder permitted development rights to expand the scope of those rights (see Article 2(3)(a) and Schedule 1 to this Statutory Rule which amends Part 1 of Schedule 1 of the GDO (development within the curtilage of a dwellinghouse));
 - inserting a new Part (Part 1A) to introduce permitted development rights for the installation of domestic microgeneration equipment including solar panels, ground and water source heat pumps and biomass fuel storage (see Article 2(3)(b) and Schedule 2 of this Statutory Rule). Some definitions have been inserted or revised in Article 2(1) of the GDO to facilitate the new permitted development rights (see regulation 2(2)); and
 - introducing some clarifying amendments to Part 2 (minor operations) see Article 2(3)(c).

3. Background

- 3.1 In Northern Ireland, the Planning (General Development) Order (NI) 1993 sets out what type of development can be undertaken without requiring a planning

application. These are referred to as permitted development rights and often relate to minor building work that is non-contentious, has minor impact to neighbours, nearby surroundings and the environment. Such rights help to reduce the number of planning applications and allow the planning system to be refocused on applications for non-householder developments which are more strategically important or more beneficial to the local economy.

4. Consultation

- 4.1 In 2008 the Department of Environment Planning Service commissioned White Young Green (Planning) Consultants to review, research and produce a report on Householder Permitted Development Rights. On 22 October 2009 the Department issued a consultation paper setting out the consultants' recommendations and asking for the comments and views of the public and interested parties on proposals for householder permitted development (PD). The consultation exercise ended on 22 January 2010. There were some 38 responses from a mix of local councils, professional associations, heritage societies, and the general public. Overall the respondents were supportive and having considered the responses the Department decided to introduce new householder permitted development rights based on the original proposals.
- 4.2 A public consultation on the Department's proposals for domestic microgeneration took place in 2007. This was later subsumed in a further general consultation, dealing principally with non-domestic microgeneration, which began on 22 October 2009 and ended on 22 January 2010. The technologies considered as part of this work were solar panels, biomass fuel storage, wind turbines, flues and heat pumps. Although the Department wants to encourage the widest possible take-up of microgeneration equipment by removing unnecessary regulatory barriers, it is concerned to ensure that the right levels of control are retained to protect the reasonable interests of neighbours, the environment and the wider community. Therefore, the proposals that were the subject of the public consultation sought to address the impacts on amenity of domestic microgeneration technologies, including those of visual appearance, and the implications of any potential nuisances such as noise and vibration. In terms of visual impact, this is mainly minimised by restrictions on the size and siting of development. It also recognised the greater sensitivity of certain areas and therefore proposed additional restrictions in certain designated areas. In the light of ongoing research it is acknowledged that clearer standards will need to be set on noise and vibration for wind turbines and air source heat pumps to ensure neighbours are not disturbed by the development. This is being dealt with principally through work administered by The Department of Energy and Climate Change (DECC) which is working with the microgeneration industry in developing a certification scheme for microgeneration that covers both standards for products and their installation. Concerns have also been raised on the potential for wind turbines to create adverse impact on air navigation systems. For these reasons, permitted development rights for wind turbines and air source heat pumps are not included in this legislation, but will be

considered after standards and safeguards have been agreed and tested. To that end the Department will continue to monitor developments in other planning jurisdictions where work is continuing to develop solutions to control potential adverse impact from certain microgeneration technologies in relation to noise, vibration and air safety.

5. Equality Impact

- 5.1 Equality Impact Screenings carried out in respect of these proposals found no evidence of any differential impact on any of the section 75 categories.

6. Regulatory Impact

- 6.2 A Regulatory Impact Assessment carried out in respect of the changes to householder applications indicated that the proposals would result in an estimated reduction of approximately 16% of householder applications. The associated savings to those carrying out householder development is expected to be around £230k at 2009/10 levels. A regulatory impact assessment is attached to this memorandum at Annex A.

7. Financial Implications

- 7.1 Applications for planning permission for minor developments, particularly from householders, form a large proportion of the planning applications within the planning system. In 2009/10 applications for domestic extensions/alterations were 27% of all applications received. 97% of applications for domestic extensions/alterations decided in 2009/10 were approved. There are also new forms of development, such as that associated with the use of small scale renewable energy technologies, which have the potential to add to planning application numbers in the future. While the processing of these applications is relatively straightforward (provided they have minimal impact upon neighbours and the local environment) the resources used to process them could be re-deployed elsewhere to improve overall service delivery. It should be noted however that extending permitted development rights may, to a certain extent, result in an increase in the number of applications for certificates of lawful use or development (CLUDS).

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The Department considers that the legislation complies with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1 There are no EU implications.

10. Parity or Replicatory Measure

10.1 This is not a parity or replicatory measure.

11. Additional Information

11.1 None.

12. Contact

12.1 Please direct any queries to Joe Torney at the Department of the Environment
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REGULATORY IMPACT ASSESSMENT (FINAL)
Householder and domestic microgeneration permitted development

1. Title of Proposal

Revised Householder Permitted Development Rights including domestic small scale renewable energy technologies (Parts 1, 1A and 2 of Planning (General Development) Order (Northern Ireland) 1993 (the "GDO") as amended by The Planning (General Development) (Amendment) Order (Northern Ireland) 2011.

2. Purpose and intended effect of measure

i) The objective:

The main objective of the Statutory Rule is to deliver proposals that improve the ability of the GDO to grant planning permission and thereby enable the planning system to regulate householder developments in a more productive and beneficial manner. The revisions to permitted development rights in the GDO therefore aim to:

- be easy to understand;
- be proportionate to the anticipated impacts of such development;
- be simple and economic to operate for both developers and planning administration; and
- manage impacts upon local amenity and environmental interests, including the built heritage.

The proposed changes to the GDO will only affect Northern Ireland.

ii) The background:

Householder development accounts for significant numbers of planning applications and accounted for 27% of all planning applications received for the period April 2009 - March 2010. In 2006/07 and 2007/08 95% and 93% of Certificates of Lawful Use or Development (CLUDs) were received for householder developments.

There are also a significant number of householder developments that are permitted but that give rise to complaints from neighbours which then have to be resolved by enforcement staff. Approximately 20% of all complaints assessed (as indicated by enforcement staff in interviews) are in relation to householder developments. Many of these can be resolved easily either because they are in fact permitted; deemed to be 'de minimis' or retrospective consent is granted through the application process. Very few complaints result in formal enforcement action being taken. However, clarification and review of the provisions of the GDO would be likely to reduce the number of complaints received by making it more easily understood or at least provide a basis for the complaint to be resolved more speedily without the need for a site inspection etc.

What has become abundantly clear over recent years is that as more people want to alter and extend their homes there is significantly greater demand upon the staff resource of DOE Planning to concentrate on householder developments when many of these developments could be satisfactorily dealt with by a GDO which offers greater clarity and more scope for undertaking works within the domestic curtilage without applying for planning permission.

iii) Risk Assessment and Rationale for Government Intervention:

It has been established in the preceding paragraphs that there would be benefits to be realised from a review of the GDO. In the “Reform of the Planning System” the Minister for the Environment set out the aims and objectives of reform as improving the Northern Ireland economy, while promoting social inclusion, sustainable communities and personal health and well being as well as promoting viable and vital towns and city centres and helping to create shared spaces accessible to all and where people can live, work and socialise. We must also balance this with protecting the environment and heritage and contributing to sustainable development.

The reform paper sets out the measures intended to improve all aspects of the planning system including development control, enforcement and regulation of householder development. Paragraph 16 of the paper recognises that the key focus for development control is proportionality and developing ways to deal with different types of development in different ways. This includes reducing bureaucracy for many householders and other local and minor developments.

The paper proposes to introduce ‘development management’ that will include extending the range of minor developments for which planning permission is given without the need for a planning application.

It is therefore clear that measures for revising the current regime for householder developments need to be introduced. If the GDO is not amended with regard to householder developments, the potential risks are as follows:

- a continued pressure on resources to process householder applications thereby diverting attention away from applications for planning permission for more economically and socially important developments;
- a one size fits all mechanism for processing householder applications that is not proportionate to the nature and impacts of such development;
- less scope for householders to extend and alter their homes to facilitate sustainable living without engaging with the planning system;
- a GDO that remains difficult for people to use, including Architects and Professional planning officers, and mitigates against a more efficient and effective planning system;

- a failure to make the significant changes to the planning regime for householder developments needed to secure a change in planning culture where the GDO manages development that has little or no impact on others; and
- an inability to secure the greater value for money that will arise from focusing resources on applications of greater significance.

3. Options Appraisal

Option 1 – Do Nothing

The current provisions for householder development set out in the GDO would continue to apply. This is not considered to be an appropriate option.

Option 2 – Changes to Parts 1 and 2 of the GDO

The GDO would be changed in line with areas for change identified by the review in Parts 1 and 2 of Schedule 1 to the GDO. In addition it is also proposed to introduce new permitted development rights for domestic microgeneration associated with the energy needs of dwellinghouses. A range of options for change were tested against planning applications for proposed householder developments, some of which had been refused permission. Having reviewed the current GDO and tested the options this provided a basis for proposing the following changes to the GDO:

- a change from volume-based calculations to dimension-based criteria for extensions, roof alterations and buildings in curtilage;
- an increase in the size and height of porches which are permissible;
- use of materials “similar in appearance” to the existing dwellinghouse, instead of “in conformity”;
- introduction of some restrictions on materials, scale and positions of buildings in conservation areas and world heritage sites;
- restrictions on works to listed buildings, unless listed building consent has previously been granted;
- restrictions on side windows above ground floor level, within 15 metres of any boundary of the curtilage of a neighbouring dwellinghouse;
- removal of the “5m” link between dwellinghouses and outbuildings. Proposals for extensions or outbuildings will be considered on the basis of criteria set out in the relevant classes, with the main constraint being related to the proportion of curtilage covered by building works;
- a new class introduced to permit work involving flues, chimneys etc;
- a new class introduced for decking, raised platforms etc;
- the extent of hard surfacing restricted unless porous or permeable materials are used or provision is made to accommodate run off;
- both oil and gas storage permitted up to 3,500 litres and 3 metres in height
- access works restricted in areas of special scientific interest in addition to sites of archaeological importance; and

- a new Part for domestic microgeneration equipment including solar thermal and solar photovoltaic panels, ground and water source heat pumps, and solid biomass fuel housing.

4. Sectors and Groups Affected

Householders (including developers and homeowners)

Householders, either as owners or owner occupiers will be the group that will be the most affected and derive the greatest benefits from the proposed revisions to the GDO. Option 2 provides greater opportunity for householders to carry out works in and around their home than are permitted under the current provisions.

Additionally, the revised GDO will be less ambiguous in its interpretation and provide greater clarity for householders in terms of what they can do under their permitted development rights. This provides them with more certainty that they can undertake works without having to go through the planning application process.

Public Sector (planning administration)

The administration of the planning system will also benefit from the revised GDO. Not only will there be fewer householder applications per year (approximately 860 based on 2009/10 figures) but it is expected that an easier to interpret GDO will result in fewer enforcement complaints thus alleviating pressure on staff resources in both development management and enforcement teams.

The reduction in householder applications will enable planning staff to focus on more socially and economically important applications. This will add value to the planning system with more time spent on producing quality decisions within shorter periods of time. There might be an increase in the number of CLUDs submitted for proposed developments from people simply seeking written confirmation that their development is permitted because PD rights are more extensive but on the other hand an easier to understand GDO and greater clarity could have the reverse effect.

Businesses involved in the preparation and submission of householder planning applications and the carrying out of householder developments

Architects and architectural technicians could experience a reduction in preparation and submission of planning applications for householder developments. However, a development, whether or not permitted, still needs to be designed and drawn up by someone qualified. The revised GDO will therefore will not negate the need for householders to appoint someone suitably qualified to prepare working drawings.

Retailers that sell conservatories and porches will benefit from the revised GDO as the need to apply for planning permission may in some instances have put people off the idea

of having a porch or conservatory erected or opt for a smaller type that is permitted. With an increased threshold in the provisions for porches, extensions and the introduction of permitted development for microgeneration equipment it should provide greater choice for the householder and this is will be of benefit to the manufacturers and suppliers.

5. Costs and Benefits

Option 1 – Do Nothing

There are no additional economic benefits or costs. Planning administration would continue to allocate resources to processing applications that have low impacts. If such applications were to increase, this could impact upon the planning administration's ability to process efficiently applications for developments which are of greater strategic or economic importance.

Option 2 – Changes to Parts 1 and 2 of the GDO

Savings for householder applicants

Householders will potentially make the most savings. Greater clarification and increased scope of the GDO will reduce the need for householders to appoint architectural technicians and/or agents to prepare plans suitable for submission to DOE Planning. Based on current fee rates they will also save on the planning application fee of £267 or £134 if it is a CLUD for proposed development. This could be a significant saving when undertaking minor works to residential property. It is uncertain whether extended permitted development rights will lead to an increase in applications for CLUDs due to a preference among householders to have written confirmation that their development is permitted.

Costs and Savings for Planning Administration

The proposed changes are estimated to result in a 16% reduction in the number of householder planning applications submitted. This represents approximately 860 fewer applications per year (on the basis of 2009/10 figures). At a fee of £267 each this represents a reduction of around £230K per annum in revenue. However, for planning administration this is mitigated to a certain extent on the basis that application fees are set to recover costs associated with the processing of applications. Therefore loss in revenue from application fees is offset by the avoided cost of processing applications. As regards fees and costs relating to CLUDs, it is uncertain for reasons stated earlier whether CLUDs will increase, decrease or remain largely the same in numbers.

Changes to the GDO should significantly help the enforcement sections to bring complaints over householder developments to a conclusion more efficiently and effectively. Research indicates that in both Belfast and Omagh Planning Divisions 20% of enforcement complaints are householder developments compared to Downpatrick Division where 50% are estimated to be householder. A significant proportion of these

complaints are found to be permitted development or are regarded as 'de minimis' i.e. it would simply not be expedient to pursue enforcement action. Given that many of these complaints do not result in enforcement action it is reasonable to expect that they simply arise because people are not able to interpret whether or not their neighbour has carried out an unauthorised development. The revised and simpler GDO should enable them to check it for themselves before submitting a complaint to enforcement. Any reduction in complaints should create savings on staff resources allocated to householder development complaints so they can be concentrated on investigating more significant breaches.

The overall effect of fewer householder applications and more efficient processing of householder based complaints will be a reduction in the resources required to deal with householder developments. This will enable those resources to be directed to non-householder developments which are more strategically important or more beneficial to the local economy.

6. Consideration of Impacts

Equality Impact Assessment

The proposed changes to permitted development rights are expected to reduce the regulatory burden of the planning system upon householders and have been assessed to impact upon householders, planning administration and upon businesses involved in the preparation and submission of householder planning applications and the carrying out of householder developments. The Department's screening for equality impacts considers that the proposals will not discriminate unlawfully, unfairly or unjustifiably against any sections of the community specified in Section 75 of the Northern Ireland Act 1998.

Environmental Impact

Perhaps the most fundamental benefit will be to the visual and residential amenity of the urban environment. Adopting an impacts based approach to the determination of permitted development rights for householders will protect the interests of the street and wider environment where it is considered an application is needed due to the potential impact of the proposal. The restriction that only permeable or porous material can be used for hard surfacing should, over time, see an environmental benefit in that there will be less surface water runoff.

Small Firms Impact Test

The proposed changes to the GDO would remove some of the regulatory burden from the many small businesses – architects, architectural technicians, town planning consultants and builders – who are responsible for the design and building of domestic alterations. However, simplification of the regulations and provision of associated guidance may lead to a reduction in those seeking specialist help to interpret the regulations correctly and the loss of charges for making an application on a client's behalf. This might be offset by an

increase in householders carrying out development with the removal of the bureaucracy involved, and greater speed from inception of the project to completion.

Competition Assessment

The proposals are not expected to impact significantly on some firms more than others nor to restrict new entrants to the householder development market.

Rural Impact Assessment

The proposals apply equally to all householders with no distinction having been made between urban or rural properties thereby the impact on rural areas will be no different. The fact that most rural properties are detached may mean there is an indirect impact in that more rural dwellers could benefit from the provisions of the revised GDO.

7. Enforcement and Sanctions

The Department's enforcement regime will continue to operate in the same way as it does with existing permitted development rights. Available sanctions include powers to compel householders to submit a planning application for works which require planning permission and powers to stop construction work and require the demolition or rebuilding of works which are unacceptable. All such sanctions are subject to the right of appeal by the affected householder.

8. Monitoring and Review

The introduction of a new planning regime for householder developments will require to be monitored to determine whether the aims of undertaking the review and subsequent amendments are met. The overarching aim has been to devise a new set of criteria for householder development. The revised criteria should achieve the objectives as set out below.

Reduce the number of householder applications in Northern Ireland:

This can easily be measured through the annual statistics and on that basis it is estimated that there should be a drop of around 16% in the number of such applications received per annum. It is uncertain whether there will be any significant change in the number of applications for CLUDs submitted.

To ensure that 'householder developments' do not give rise to adverse environmental impacts:

In testing the proposals it was found that none of the applications which were refused permission would become permitted development under the new regime thereby confirming that adverse environmental impacts are unlikely to occur from the revised GDO.

Be easily understood and interpreted by householders, agents and planning professionals:

If there is a reduction in the number of CLUDs it could provide an indication that people more easily understand the GDO and they do not need to apply for such a determination. The workshops conducted to test the proposals showed that planning officers found the revised GDO easier to interpret and required less time to assess proposals. At present a high proportion of enforcement complaints are based on householder developments and while it is not possible to assemble accurate statistics to determine the exact proportion of householder complaints enforcement teams will be able to gauge if there has been a reduction in such complaints. Additionally it is likely that a higher percentage of these can be resolved as permitted development or 'de minimis' under the new provisions thus reducing the staff resource required to deal with them if they would have proceeded to enforcement action.

9. Consultation

In October 2009 the Department issued a consultation paper setting out recommendations for change and asking for the comments and views of the public and interested parties on proposals for householder permitted development.

The consultation paper set out in detail the rationale for the proposed changes under each type of householder permitted development including building extensions, roof alterations and extensions, porches, buildings in the curtilage, hard surfaces, oil and gas storage containers, chimneys, flues etc, decking, means of enclosure, access to a road, and painting. Proposals for domestic microgeneration permitted development were set out in a draft Statutory Rule that accompanied the main consultation on non-domestic microgeneration permitted development proposals. This followed a previous consultation in 2007 which generally supported the proposals to bring forward permitted development rights for certain domestic microgeneration technologies.

There were 38 responses received to the householder consultation paper from a wide range of stakeholders including elected representatives, public bodies and government departments, residential and community groups, individual members of the public, environment and heritage groups, business and development interests and architects and professional bodies.

Overall there was a significant level of support for the proposals put forward in the Householder consultation paper. A summary of the responses to the Householder Permitted Development consultation paper is available on the planningni website.

10. Summary and Recommendations

The objective of this review is to improve the ability of the GDO to grant planning permission and so enable the planning system to regulate householder developments in a

more proportionate and effective manner. The proposed changes to the GDO therefore aim to:

- be easy to understand;
- be proportionate to the anticipated impacts of the development;
- be simple and economic to operate for both developers and planning administration; and
- manage impacts upon neighbours, local amenity and environmental interests, including the built heritage.

The proposed changes to the GDO will only affect Northern Ireland and have emerged from NI specific research into issues relating to the current regime and impacts based approach to permitted development.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by a senior officer of the Department of the Environment.

Maggie Smith

Date: 7 March 2011

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