

EXPLANATORY MEMORANDUM TO
THE PLANNING (AVIAN INFLUENZA) (SPECIAL DEVELOPMENT)
ORDER (NORTHERN IRELAND) 2015

S.R. 2015 No. 175

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly
- 1.2 The Statutory Rule is made under section 32 of the Planning Act (Northern Ireland) 2011 (the 2011 Act) and is subject to negative resolution procedure before the Assembly.

2. Purpose

- 2.1 The Order grants planning permission in respect of certain development which is necessary for the purposes of housing poultry and other captive birds to protect them from avian influenza. The Order applies to land within a controlled zone, H5N1 controlled zone, wild bird control area or wild bird monitoring area declared by the Department of Agriculture and Rural Development. Where the Order applies, no specific application for planning permission is needed for development permitted by the Order.

3. Background

- 3.1 The Regulations are technical in nature and simply transfer to councils the provisions currently contained in the Planning (Avian Influenza) (Special Development) Order (Northern Ireland) 2008 that are currently applicable to the Department. This takes account of the transfer of most planning functions to councils in April 2015.

4. Consultation

- 4.1 The Department did not consult on the Order in its "Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 2) between October and December 2014, as there have been no outbreaks to date of avian influenza in Northern Ireland. However, an outbreak of avian influenza in England in November 2014 prompted the Department review its position and to take a precautionary approach to this issue by proceeding to bring into operation an Order replicating the provisions of the Planning (Avian Influenza) (Special Development) Order (Northern Ireland) 2008 to reflect the transfer of planning powers to councils in April 2015.

5. Equality Impact Assessment

- 5.1 In accordance with its duty under Section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals and has concluded that they do not have implications for equality of opportunity. The measures will not affect any group disproportionately.

6. Regulatory Impact

- 6.1 A Regulatory Impact Assessment carried out in respect of the Order indicated that the proposals would not impose any significant costs to business or the voluntary sector.

7. Financial Implications

- 7.1 The financial implications of the move to the new two-tier planning system have been addressed in the financial package being transferred to the new councils.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The Department considers that the proposed Order is compatible with 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 Equivalent Regulation exist in England, Scotland and Wales.

11. Additional Information

- 11.1 Not applicable.

REGULATORY IMPACT ASSESSMENT
Avian Influenza Special Development Order

1. Title of Proposal

The Planning (Avian Influenza)(Special Development) Order (Northern Ireland) 2015

2. Purpose and intended effect of measure

i) The objective:

The main objective of the Statutory Rule is to provide limited permitted development rights to enable poultry and other captive birds to be housed or kept separate from wild birds; or from other poultry and other captive birds as part of avian influenza prevention measures in Northern Ireland.

The proposed Regulations will only affect Northern Ireland.

ii) The background:

Following an outbreak of Avian Influenza in Suffolk in February 2007, the Department considered the need to provide limited permitted development rights to enable poultry and other captive birds to be housed or kept separate as part of avian influenza prevention measures in Northern Ireland. The Department liaised with the Department of Agriculture and Rural Development, (DARD), which is responsible for animal health and welfare and which has the power to require poultry and other captive birds to be housed or otherwise kept separate from wild birds; or from other poultry and other captive birds, in order to prevent avian influenza.

Further outbreaks of avian influenza subsequently occurred in Norfolk in November 2007; in Dorset in January 2008; and in East Yorkshire in November 2014.

Although there have been no recorded incidents of avian influenza in Northern Ireland, it is only prudent to consider how an outbreak or the likelihood of an outbreak might impact on the planning regime.

Certain types of development are already permitted without the need to apply for planning permission. These rights are set out in the Planning (General Permitted Development) Order (Northern Ireland) 2015 (the GPDO). Part 6 of Schedule 1 to the GPDO provides permission for development relating to agricultural buildings and operations. However the limitations of those rights, particularly the fact that they

grant permission for structures intended to be permanent and the fact that they do not cover provision for zoo, game and other birds, make the existing rights unsuitable where there may be an immediate need to build temporary buildings to house birds.

The proposed Special Development Order (SDO) will allow owners of poultry and other captive birds to erect buildings to temporarily house their birds, should this be required to prevent avian influenza, without the need to apply for planning permission.

iii) Risk Assessment and Rationale for Government Intervention:

Failure to provide permitted development rights will lead to delay in the erection or extension of buildings where an application for planning permission is required. Such a delay, where urgent action is required to minimise the threat of disease spread, could have a detrimental effect on farmers and poultry owners who would have their birds destroyed if they were found to be infected by avian influenza. Adverse impact on the welfare of birds is also likely since, for example, the normal accommodation for free range birds is not usually designed for 24 hour living.

3. Options Appraisal

Option 1 – Do Nothing

This is not a realistic option as the introduction of avian influenza prevention measures by DARD, which may include a requirement to house or otherwise keep poultry and other captive birds separate from wild birds; or from other poultry and other captive birds, is likely to lead to an urgent need for the erection or extension of buildings. The Department has a duty to consider how such development should be regulated and make appropriate provision for this. The effect of doing nothing would mean applications for planning permission would be required for such development.

Option 2 - Introduce new Regulations

The introduction of new Regulations, a Planning (Avian Influenza)(Special Development) Order (Northern Ireland) 2015, under section 32 of the Planning Act (Northern Ireland) 2011 will provide limited permitted development rights to enable poultry and other captive birds to be housed or kept separate as part of avian influenza measures required by DARD in Northern Ireland. The advantages of this approach are that the SDO can be made and become operative now as the rights

only and automatically become exercisable once DARD require birds to be housed. There will be no delay between the DARD requirement and the permitted development rights being available. Similarly, the permitted development rights cease to be available once the DARD requirement is lifted. England, Scotland and Wales introduced similar arrangements.

4. Costs and Benefits

Option 1: Do Nothing

The council would incur costs associated with determining applications for planning permission for development necessitated by avian influenza prevention measures. It would be very likely that consideration would need to be given to fast tracking such applications, adding additional burden upon resources and disadvantaging other users of the planning system. Bird and poultry keepers would incur fees and other costs in making applications. There are no benefits associated with this option.

Option 2: Introduce new Regulations

The Department would incur normal administrative costs associated with making and printing a Statutory Rule.

This option is the most beneficial as it provides permitted development rights that are immediately available or withdrawn in concert with DARD requirements.

5. Sectors and Groups Affected

The permitted development rights provided by the SDO will impact mainly on large scale poultry or bird keepers. The Regulatory Impact Assessment (RIA) that accompanied the DARD consultation (on the transposition of Council Directive 2005/94/EC on measures for the control of avian influenza) indicated that the Northern Ireland poultry industry consists of a relatively small number of large-scale producers with around two-thirds of poultry production carried out on small scale units of less than 1,000 birds each.

6. Enforcement and Sanctions

The relevant council will enforce the Order as it considers appropriate.

7. Consideration of Impacts

Equality Impact Assessment

An Equality Impact Assessment screening carried out in respect of this proposal found no evidence of any additional impact on any of the Section 75 categories.

Health Impact

Avian Influenza is primarily a disease of birds and the Department understands that the public health implications are negligible except for those who work very closely with infected birds.

Small Firms Impact Test

The proposed Regulations are unlikely to apply to small firms.

Human Rights Assessment

The Department considers that the proposed Regulations are fully compliant with the Human Rights Act 1998.

Rural Impact Assessment

The Order will better enable farmers and other poultry or captive bird keepers to comply with any DARD requirement to house or separate birds or other poultry to prevent avian influenza. It will be beneficial and will not have an adverse impact.

8. Monitoring and Review

The introduction of the new two tiered planning regime will require to be monitored to determine whether the aims of introducing the new Order are met. The new Order will be the subject of a future review, when the Order has had an opportunity to bed down following transfer of planning powers to district councils in 2015.

9. Consultation

The Department considers that as the legislative amendments are technical in nature, no express consultation on them is required.

10. Summary and Recommendations

The introduction of a new Order is recommended. The advantages of this approach are that the SDO can be made and become operative now as the rights only and automatically become exercisable once DARD require birds to be housed. There will be no delay between the DARD requirement and the permitted development rights being available. Similarly, the permitted development rights cease to be available once the DARD requirement is lifted.

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.

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Date: 23rd March 2015

A handwritten signature in black ink, appearing to read 'Angus Kerr', with a stylized flourish at the end.

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