

EXPLANATORY MEMORANDUM TO THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (WALES) ORDER 2008

This Explanatory Memorandum has been prepared by the Department for Environment, Sustainability and Housing and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i.) **Description** – This Order will continue in force for another year a new Part 39 to Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). Part 39 granted a general planning permission for certain development which could become necessary for housing poultry and other captive birds to protect them from Avian Influenza.

(ii.) **Matters of special interest to the Subordinate Legislation Committee** – None.

(iii.) **Legislative background** – This order is made under sections 59, 60 and 333(7) of the Town and Country Planning Act 1990. These sections give Welsh Ministers power to grant a general planning permission (permitted development rights) for categories of development specified in a “development order” . The GPDO is made under this power and grants a general planning permission for a range of, predominantly, minor development set out in the various parts of Schedule 2 . Section 333(5) provides that any statutory instrument which contains a development order is subject to the negative resolution procedure.

(iv.) **Purpose and intended effect of the legislation** – Parts 1 and 6 of Schedule 2 to the GPDO grant permitted development rights for farmers and householders to carry out certain development. However, the limitation of those rights, especially the need to comply (in the case of Part 6) with prior approval procedures, 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 inflexible in a situation where there may be an immediate need to build temporary buildings to house birds.

The Order continues in force, for another year, a new Part 39 “Temporary Protection of Poultry and other Captive Birds” originally added to Schedule 2 to the GPDO from 22 March 2007 by the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2007 (S.I. 2007/952) (“the 2007 order”). This granted a temporary permitted development right until 21 March 2008 to allow the erection of temporary shelters for the housing of birds or to modify existing buildings without the need to obtain specific planning permission. It is subject to limitations such as for size and height and is also subject to conditions requiring notification to the local planning authority, prohibiting the use of the structure other than for protecting birds against Avian Influenza. The new order also amends paragraph A. 2(c) of Part 39 so that any building must be removed and the land restored to its pre-existing state as soon as practicable on or after the relevant date (21 March 2009).

Continuation of these provisions for another year is intended to ensure that owners have the ability to provide ,should it be required, adequate shelter to house birds to protect them

against Avian Influenza without needing to seek planning permission from the local planning authority.

(v). **Implementation** – This instrument comes into force on 21 March 2008. If the 2007 order lapses without being continued and if, during an Avian Influenza outbreak, bird owners are required by law to house birds, owners without suitable existing structures will either have to comply with the requirement and risk a planning enforcement notice or not comply with the requirement whilst awaiting planning permission and risk action being taken against them under Avian Influenza legislation. Although carrying out development without planning permission is not a criminal offence and enforcement action is discretionary (it should only be taken if “expedient”), it is clearly not desirable for owners to be exposed to uncertainty and the risk of enforcement action when this could be avoided by continuing the permitted development right. It would also not be in the public interest for owners only in Wales to find themselves in this situation: it is desirable that there is consistency across the UK to maintain the common approach to minimising the risk of Avian Influenza

(vi). **Consultation** – As with the 2007 order no formal consultation has been undertaken because of the need to act urgently. The order will also only last for a year, is effectively de-regulatory and is a contingency measure.

(vii). **Regulatory Impact Assessment** –

The order will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 2006, section 77) and the Welsh Language Scheme (section 78);
- be compatible with the Assembly’s scheme for sustainable development (section 79);
- be compatible with Community law (section 80);
- be compatible with the Assembly’s human rights legislation (section 81);
- be compatible with any international obligations binding the UK Government and Assembly (section 82); and
- be compatible with the Local Government, Voluntary sector and Business Schemes (sections 73-75).

a. Options

Option 1 – **Do nothing** – The 2007 order lapses and specific planning permission is needed to erect temporary buildings as shelters to protect birds from Avian Influenza.

Option 2 – **Continue for another year those temporary permitted development rights to erect/extend buildings without the need for specific planning permission** – This would continue bird keepers’ temporary additional permitted development right for the erection of

temporary buildings, or the extension of existing buildings, for housing of poultry and other captive birds to protect them from Avian Influenza.

b. Costs and Benefits

Sectors and groups affected

The groups that will be most affected are primarily bird keepers (particularly farmers) and local planning authorities who might need to take enforcement action if temporary buildings are not removed within 12 months.

Race equality assessment

Neither of the options has a race impact.

Health Impact assessment

Avian Influenza is primarily a disease of birds and the public health implications are currently negligible except for those who work very closely with infected birds. However, Option 2 would allow bird keepers in certain areas near to the infected premises to comply with their legal obligations to house their birds to prevent contact with wild birds. This would limit the risk of further infection should the virus be circulating in the wild bird population.

Rural considerations

Option 2 would allow the most flexibility to bird keepers, especially farmers, to ensure that they deal with any requirement to bring birds indoors by erecting or extending buildings to help protect birds from Avian Influenza.

Breakdown of costs and benefits

As this is a temporary right for bird keepers, it is impossible to estimate the exact or approximate costs or benefits as at this stage as we do not know to what extent this exceptional right will be used. In general, granting this right will create more benefits than costs for both bird keepers and local planning authorities who might otherwise have to deal with an influx of planning applications.

Economic Benefit

Option 1 – there would be no benefit from this option since any planning applications from bird keepers would need to be consulted upon before their determination by individual local planning authorities. The whole process would take several weeks.

Option 2 – Farmers and the poultry industry will benefit from the scope to put up buildings quickly. Without such buildings if there are any further outbreaks of Avian Influenza, it is possible that hundreds of thousands or even millions of birds would have to be slaughtered. The potential financial losses involved if this were necessary have not been calculated.

Environmental Benefit

Option 1 – there would be no environmental benefits from this option.

Option 2 – there would be benefits if birds were protected from the risk of Avian Influenza.

Social Benefits

Option 1 – there would be no social benefits from this option.

Option 2 – there would be no social benefits from this option.

Economic Costs

Option 1 – requiring specific planning permission for buildings would potentially have a considerable cost for bird keepers who did not have the flexibility to put up buildings quickly. If as a result birds were slaughtered the impact to the economy particularly the farming industry would potentially be considerable.

Option 2 – the buildings will be permitted for up to 12 months. The expectation is that they would then be removed. Should this not happen, local planning authorities would need to take enforcement action. Such action should not impose significant additional costs on local planning authorities.

Environmental Costs

Option 1 – there would be a loss of captive birds including ornamental birds.

Option 2 – potentially there might be some visual impact from temporary buildings.

Social Costs

Option 1 – there are no social costs under this option.

Option 2 – there are no social costs under this option.

c. Costs

There are no additional financial implications for the Welsh Assembly Government or local authorities from the making of this Order. The cost of preparing and processing this Order can be met from existing and planned administration costs budgets.

Impact on Small Business

Continuing additional permitted development rights should benefit small firms by allowing them to act quickly to put up temporary buildings to protect birds without the need to make a planning application and pay a fee.

Impact on others

All property owners, whether commercial or householder, would benefit from continuation of the additional permitted development right.

d. Competition Assessment

A competition filter has been carried out and no effects on competition have been identified. The measure should benefit firms, who will be able to continue to exercise this exceptional right to erect temporary buildings and structures to protect birds from the spread of Avian Influenza.

e. Consultation

No formal consultation has been undertaken because of the need to act urgently and the temporary nature of the measure.

f. Post implementation review

Any temporary buildings will only be granted planning permission for a period of 12 months. Bird keepers who have not removed any buildings after the 12 months has expired will be open to enforcement action.

g. Summary

Continuation of the temporary additional permitted development right introduced by the 2007 order for a year to allow bird keepers to erect temporary buildings and structures to house birds is a precautionary measure to deal with the risk of a further outbreak of Avian Influenza. It is also in line with the provisions of similar measures elsewhere within Great Britain.

Option 2 is therefore the preferred option.